

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



ORIGINAL

**75-7327**

**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

DORSEY & CO., INC.,

*Plaintiff-Appellant,  
against*

BANQUE NATIONAL DE LA REPUBLIC D'HAITI,

*Defendant-Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT—  
SOUTHERN DISTRICT OF NEW YORK

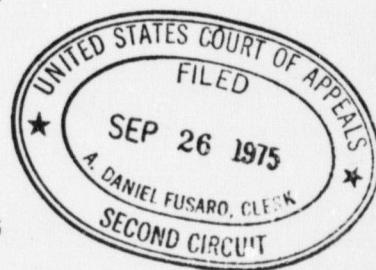
**APPENDIX**

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& KAPLAN

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PAGINATION AS IN ORIGINAL COPY

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### TRIAL TRANSCRIPT

#### Plaintiff's Witnesses:

1. Robert J. Vedros

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- 3. Deposition of Gerard Martineau ..... 124a [85-88]

Defendant's Witnesses

- 1. Gerard Martineau

- Direct ..... 129a[113-116]
  - Cross ..... 134a[120-122]

- 2. Victor Pierre-Louis

- Direct ..... 138a[124-126]
  - 142a[129-130]
  - 145a[137]

- 3. Deposition of George Dorsey..... 148a[144-146]

la

Relevant Docket Entries.

\* \* \* \* \*

-75 ✓ filed stip. that figures herein represent the closing prices of the stocks

-75 ✓ Filed Opinion # 42071...that the Courts findings no basis upon which to hold that pltf. was negligent in this transaction; Pltf. is entitled to recover damages as indicated herein: The parties have agreed that the market value of the securities on Oct. 2, 1972 was \$567,375, and that their value on Dec. 22, 1972 was \$530,405 a difference of \$36,970, to which sum pltf is entitled to judgment together with interest. In view of the fact that pltf. has prevailed upon its claim, the deft counterclaim based upon the attachment heretofore granted is dismissed upon the merits. The foregoing shall constitute the Court's findings of Fact and Conclusions of law. --Weinfeld, J

\* \* \* \* \*

✓ Filed JUDGMENT # 75,377 that pltf. Dorsey & Co. Inc. recover of the deft. Banque National de La Republic D'Haiti the sum of \$35,687.50 with interest thereon, at the rate of 6 $\frac{1}{2}$  as provided by law, from Oct. 2, 1972 together with costs of action --Weinfeld, J. Judgment entered 4-30-75--clerk

\* \* \* \* \*

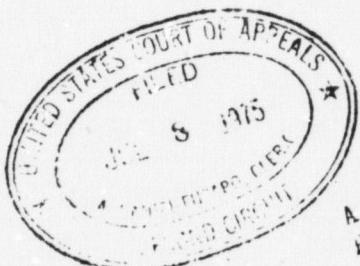
A TRUE COPY  
RAYMOND F. BURGHARDT, CLERK  
*Raymond F. Burghardt*  
RECORDED APR 30 1975  
Deputy Clerk

2a

Relevant Docket Entries.

\* \* \* \* \*

July 7-75 Filed transcript of record of proceedings dated Feb 24-1975.



A TRUE COPY  
RAYMOND F. BURGHARDT, Clerk  
BY E. [Signature]  
Deputy Clerk

Opinion, No. 42071, Findings of Fact and  
Conclusions of Law of District Judge  
Weinfeld.

EDWARD WEINFELD, D. J.

Plaintiff, Dorsey & Company, Inc., a stock brokerage house located in New Orleans, Louisiana, brought this action against Banque National De La Republic D'Haiti ("Banque") for damages allegedly caused by Banque's negligence in handling stock certificates and drafts transmitted to it for collection by plaintiff's agent, The Hibernia National Bank ("Hibernia Bank"), also located in New Orleans. The stocks in question had been purchased by plaintiff for the account of two of its customers, Williams Investors and Whitkind Realty; it was at their instruction that plaintiff, on September 25, 1972, caused the stock certificates and drafts totalling \$628,434.64 to be sent by registered mail to defendant Banque for collection from one Paul Supart & Co.

The instructions contained in the collection letters accompanying the stock certificates and drafts directed the Banque to deliver them against payment by Paul Supart, the drawee, and to remit the proceeds by cable. The instructions further provided that in the event of nonpayment of the drafts, or delay in payment or acceptance, or dishonor

Opinion , Findings of Fact and  
Conclusions of Law.

the Banque was to notify the Hibernia Bank promptly stat-  
ing the reasons therefor.

The Banque received the documents and stock  
certificates on or about September 29, 1972; however, for  
reasons set forth hereafter, it never presented the drafts  
or received payment, nor did it notify the Hibernia Bank  
promptly of delay in payment or acceptance giving reasons  
therefor. The package containing the certificates and the  
drafts was returned to the Hibernia Bank on December 22,  
1972, by which time the value of the shares was consider-  
ably lower than on the date when the Banque received them  
on September 29, 1972. The plaintiff, having been unable  
thereafter to collect payment from its customers, Williams  
Investors and Whitkind Realty, sold the securities at a  
loss, which it seeks to recover.

The evidence upon the trial established that on  
or about September 30, 1972, a day after the package con-  
taining the drafts and certificates arrived at the Banque,  
Banque sent it to the post office at Haiti for return to  
the Hibernia Bank. However, as the defendant itself  
acknowledges, "inexplicably, the Haitian Post Office did

Opinion, Findings of Fact and  
Conclusions of Law.

not return the package containing the certificates and drafts until on or about December 1, 1972, and then by steamship," and, as noted, the package was delivered to the Hibernia Bank three weeks later on December 22, 1972.

Prior thereto other events had occurred. The Hibernia Bank, not having heard from Banque, cabled it on October 2, 1972, requesting confirmation of the receipt of the documents and information as to whether they were paid. The Banque responded on October 11th by cable to the Hibernia Bank that the documents were "apparently not received to date." On October 17th Hibernia Bank again cabled Banque: "Please investigate again and cable results"; this was followed up on October 20th when the Hibernia Bank sent another cable to Banque: "As soon as you receive advise urgently by cable." On October 26th Hibernia Bank again cabled Banque requesting that it be advised by cable of the receipt or non-receipt of the documents. Finally, on October 31st Banque cabled Hibernia Bank that the documents had not been received to date. On November 16th, acting under the belief that the documents had been lost in the mails, and stating that "[o]ur post office has been unable to get a reply from the Post Office in Haiti," the Hibernia Bank sent duplicate

Opinion, Findings of Fact and  
Conclusions of Law.

copies of the collection letters to Banque, requesting Banque to assist it in tracing the package of documents and to complete mail loss affidavits. Hibernia Bank then followed up on November 20th with another cable requesting confirmation of its letter and of the Banque's intention to provide the mail loss affidavits. Still without word from the Banque on November 28th, a representative of the Hibernia Bank called an official at the Banque in Port-au-Prince, who apparently professed lack of knowledge of the matter, whereupon the representative of the Hibernia Bank on that day sent another letter to the Banque confirming their conversation and enclosing a copy of its November 16, 1972 letter and additional mail loss affidavits with a request they be completed and returned immediately.

At this point, in the beginning of December 1972, Banque officials for the first time conducted an investigation which, according to them, revealed that a mail clerk, believing the documents were sent to the Banque in error, since Supart was not known in Haiti, had delivered them to the post office for return to the sender on September 30th. The Banque's comptroller, who supervised the investigation,

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testified that the Collection Department was unaware of what the mail clerk had done with the documents. However, the Banque is responsible for the actions of its employees, whether employed in the Mail Department or in the Collection Department. Additionally, there is no explanation for the delay in answering Hibernia's cables and letters of inquiry, or for the misstatement that the documents apparently had not been received, or for failure to notify the Hibernia Bank promptly of nonpayment, no matter what the reason. A prompt inquiry would have disclosed the facts when the Hibernia Bank, on October 2, first requested confirmation of the receipt of documents, and thereafter when cable after cable was sent. The Banque clearly was negligent in the handling of the transaction; its acts and omissions to act were not only negligent, but misleading. Indeed, the Banque practically conceded its negligent conduct when on December 19th it cabled the Hibernia Bank that it had returned the documents "by error on September 30, 1972 thru the post office," added that "we are at your disposal for collecting" the items, and concluded with "apologies."

The parties are in agreement that the law of

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Haiti governs on the issue whether the conduct of defendant casts it in liability to plaintiff, and that two provisions of the Haitian Civil Code are applicable:

"Article 1168 - Any act by a person which causes prejudice to another, obliges said person through whose fault the prejudice occurs, to repair it."

"Article 1169 - Everyone is liable for the prejudice he has caused, not only through his act, but also through his carelessness or imprudence."

The parties also agree that "carelessness or imprudence" connotes the usual standards in determining negligent conduct.

The legal expert called by defendant acknowledged the applicability of these provisions to the issues at hand. However, without citation of authority, based upon a hypothetical question, he expressed the opinion that upon the facts both the plaintiff and defendant were negligent, and in consequence the defendant would not be held liable. He was of the view that the greater fault was with the plaintiff because it failed to furnish the address of the drawee. However, the determination of the fact issue is, of course, for the trier of the fact. I find

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no basis upon which to hold that plaintiff was negligent in this transaction. The expert was voluble but far from impressive, and considering that he was counsel for defendant Banque, to whom he previously had given an opinion exonerating it from liability, he can hardly be considered an objective witness.

The defendant persists in its contention that plaintiff was also at fault, that plaintiff's contributory negligence was a proximate cause of its losses, and that plaintiff is therefore barred from recovery. Essentially, defendant's claim is that the plaintiff had failed to use due diligence to ascertain the essential facts pertaining to the principals of Williams Investors and Whitkind Realty; that these principals were engaged in fraudulent activities; and that the direction to present the drafts for payment by Paul Supart in Port-au-Prince, Haiti, was itself part of a fraudulent scheme, since Paul Supart either did not exist or had no place of business in Port-au-Prince. To support its claim that plaintiff was contributorily negligent, defendant contends that plaintiff, in connection with the Williams Investors and Whitkind Realty accounts, violated various rules and regulations;

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of Law.

SEC Rule 15b10-3, "the "Suitability Rule"; Rule 405  
of the New York Stock Exchange, the "Know Your Customer"  
(2)  
Rule; SEC Rule 15b10-4, which among other things re-  
quires supervision of customer accounts; and sections  
(3)  
4(c)(2), (5) and (8) of Regulation T.

It is defendant's contention that if the plain-  
tiff had used due care throughout its dealings with the  
accounts in question, and had not violated the rules and  
regulations referred to above, it never would have opened  
the two accounts and never would have sent the drafts and  
stock certificates to the defendant Banque for collection --  
or, put another way, that plaintiff, through its own negli-  
gence, set in motion a series of events which, in any event,  
could only have resulted in a return of the certificates  
and unpaid drafts. This defense must fail; it amounts to  
no more than an argument that if the transaction had never  
taken place there would have been no damages and no loss.

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(1) 17 C.F.R. § 240.15b10-3.

(2) 17 C.F.R. § 240.15b10-4.

(3) 12 C.F.R. § 220.4(c)(2), (5) and (8).

Opinion, Findings of Fact and  
Conclusions of Law.

From April to August, 1972, prior to the first purchase of securities involved in this action, plaintiff had purchased other securities for Williams Investors and Whitkind Realty in similar fashion on six or seven occasions. The only difference between those six or seven transactions and the instant transaction was that the drafts in the prior transactions were drawn upon and presented for payment to a drawee in Montreal, Canada. In each of those transactions payment was made in due course. The plaintiff's successful experience in the Canadian transactions justified it in accepting its customers' instructions in the instant transaction.

More importantly, however, even if the plaintiff can be said to have been negligent, either by virtue of a violation of a regulation or a violation of some independent duty, its negligence was not a proximate cause of the damages it seeks to recover in this lawsuit. It is inescapable that if the Banque had acted with due care and, following instructions, promptly notified the plaintiff of nonpayment and returned the securities, plaintiff would have been able to either obtain payment from its customers or, failing that, effect a sale of the securities to mitigate its damages. Not only did the Banque fail to follow the instructions in

Opinion, Findings of Fact and  
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the collection letters, thereby violating its acknowledged practice of following instructions accompanying drafts, but it subsequently compounded its negligent conduct over a two and a half month period by failing to conduct a prompt investigation after the Hibernia Bank's repeated inquiries, and by misleading the Hibernia Bank and the plaintiff into believing that the Banque had not received the drafts and certificates.

It was this negligence on the Banque's part, not any alleged negligence of the plaintiff, that was the proximate or legal cause of the losses plaintiff seeks to recover. Assuming that plaintiff was negligent, such negligence could have been a proximate cause only of any loss representing the decrease in value in the securities from the time of their purchase to the time when they would have been returned by the Banque had it acted with due care, but plaintiff does not seek to recover this portion of its loss. The claim is confined to the decrease in the value of the securities during the period commencing with the Banque's failure promptly to notify plaintiff of nonpayment contrary to instructions, and ending on the date of the return of the securities; as to these losses the Banque's negligence

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Conclusions of Law.

Was the sole proximate cause.

The alleged violations of the regulations referred to have been advanced by defendant under its plea of contributory negligence, which the court rejects. Upon the trial and in its post trial brief, the defendant apparently sought to expand its defense by claiming that the alleged violations of rules and regulations are an absolute bar to plaintiff's claim, regardless of whether they were a proximate cause of plaintiff's loss. Assuming that a violation by itself carries with it an absolute forfeiture of plaintiff's right to recovery against a third party like (5) the defendant, the defendant's failure to plead this as (6) an affirmative defense bars its consideration by the court.

(4) See generally Prosser, The Law of Torts § 44 at 281-86, § 52 at 317-320 (4th ed. 1971).

(5) The defendant has not pointed to any case in which any such defense was asserted by a third party. Nor has it offered any support for dispensing with the requirement of showing proximate cause as a part of any such defense. Indeed, the existence of such a requirement has support. Irving Weis & Co. v. Offenberger, 31 Misc.2d 628, 220 N.Y.S.2d 1001 (Bun. Ct. 1961); E.F. Hutton & Co. v. Weinberg, [1961-64 Transfer Binder] CCH Fed. Sec. L. Rep. ¶91,332 (N.Y. Sup. Ct. 1964). Dispensing with the requirement would also run counter to the requirement of showing proximate cause as part of an affirmative action for damages for alleged violations of the securities laws. See VI Loss, Securities Regulation 3880-83 (1969); V Loss, supra, at 3301, 3307-08, III Loss, supra, at 1759 (1961).

(6) Fed. R. Civ. P. 8(c); see Trio Process Corp. v. L. Goldstein's Sons, Inc., 461 F.2d 66, 74 (3d Cir.), cert. denied, 409

Opinion, Findings of Fact and  
Conclusions of Law

Plaintiff is entitled to recover damages based upon the difference between the value of the securities on the date the Banque received them plus a reasonable time for presentation for payment to the drawee and notification of nonpayment, in this instance, October 2, 1972, and their value upon the date they were received, December 22, 1972, when they could have been sold by plaintiff in the event its customers did not make payment.

The parties have agreed that the market value of the securities on October 2, 1972 was \$567,375, and that their value on December 22, 1972 was \$530,405, a difference of \$36,970, to which sum plaintiff is entitled to judgment together with interest.

In view of the fact that plaintiff has prevailed upon its claim, the defendant's counterclaim based upon the attachment heretofore granted is dismissed upon the merits.

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footnote 6 cont'd

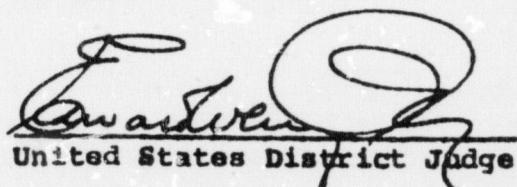
U.S. 997 (1972); Radio Corp. of America v. Radio Station KYFM, Inc., 424 F.2d 14, 17 (10th Cir. 1970); Roe v. Sears, Roebuck & Co., 132 F.2d 829, 832 (7th Cir. 1943); United States v. Commercial Union Ins. Group, 294 F. Supp. 768, 772 (S.D.N.Y. 1969).

15a

Opinion, Findings of Fact and  
Conclusions of Law.

The foregoing shall constitute the Court's  
Findings of Fact and Conclusions of Law.

Dated: New York, N. Y.  
March 21, 1975

  
United States District Judge

Stipulation that Figures Represent Closing Prices  
of Stocks.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

DORSEY & COMPANY, INC.,

Plaintiff,

73 Civ. 4069(E.W.)

- against -

STIPULATION

BANQUE NATIONAL DE LA REPUBLIC  
D'HAITI,

Defendant.

- - - - - X

IT IS HEREBY STIPULATED AND AGREED by and between  
the undersigned attorneys for the respective parties that  
the following figures represent the closing prices of the  
stocks in issue on the dates noted, except that for C & R  
Clothiers, the figures are the closing bid prices on the days  
in question.

	<u>9/29</u>	<u>12/22</u>
Teleprompter	37-1/8	33-7/8
Tokheim	23-3/4	22-7/8
Syntex	76-1/2	80
C & R Clothiers	18-1/4	14

## Stipulation.

IT IS FURTHER STIPULATED AND AGREED that the following figures represent the market value of the stocks in issue on the dates noted:

	<u>9/29</u>	<u>12/22</u>
Teleprompter	\$445,500	\$406,680
Tokheim	59,375	57,225
Syntex	38,250	40,000
C & R Clothiers	<u>36,500</u>	<u>26,500</u>
Total	\$579,625	\$530,405

Dated, New York, N. Y.  
February 28, 1975

Tenzer, Greenblatt, Fallon & Kaplan  
TENZER, GREENBLATT, FALLON & KAPLAN,  
Attorneys for Plaintiff

S/L & C  
LUNNEY & CROCCO,  
Attorneys for Defendant

Judgment No. 75377, Granting Plaintiff  
\$35,687.50 with Interest From October 2,  
1972.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
DORSEY & COMPANY, INC.,

Plaintiff, : 73 Civ. 4069 (EW)

-against-

BANQUE NATIONAL DE LA REPUBLIC  
D'HAITI,

APR 30 1975

S.D. OF N.Y.

Defendant.  
-----  
x

JUDGMENT # 75377

This action came on for trial before the Court,  
Hon. Edward Weinfeld, District Judge, presiding, and the  
issues having been duly tried, and a decision having been  
duly rendered, it is

ORDERED AND ADJUDGED, that the plaintiff Dorsey &  
Company, Inc. recover of the defendant Banque National de la  
Republic D'Haiti the sum of \$35,687.50 with interest thereon, at  
the rate of 6% as provided by law, from October 2, 1972,  
together with its costs of action.

Dated: New York, New York  
March 2, 1975

E.N.T.D.

Edward Weinfeld  
Edward Weinfeld, U.S.D.J.

MICROFILMED  
BY THE CLERK'S OFFICE  
U.S. DISTRICT COURT  
NEW YORK CITY

JUDGMENT ENTERED - 4/30/75

Clerk's Office  
4/30/75

19a

Plaintiff's Exhibit 11, Cabelgram by Defendant  
to Hibernia National Bank dated  
December 19, 1972.

HNR-1920

The Hibernia National  
IN NEW ORLEANS  
CABLEGRAM RECEIVED

RECEIVED  
U. S. Dist. Court  
S. D. of N. Y.

FROM

BANQUE NATIONALE REP

PORT AU PRINCE

DATE CABLED	DATE RECEIVED	CODE WORDS
12/19/72		

attn john g robin asst. cashier

REYOUR LETTER NOV 28 REYOUR COLLECTIONS C126388  
THRU C126396 WE CONFIRM PREVIOUS TELEPHONE  
CONVERSATION OUR MR BONNEFIL WITH YOU STOP  
YOUR DOCUMENTS RETURNED TO YOU BY ERROR ON  
SEPTEMBER 30, 1972 THRU POST OFFICE AND SHIPPED  
TO YOU BY POST OFFICE BY REGISTERED STEAMER  
MAIL DISPACHED ON DECEMBER FIRST 1972 ON  
BOARD SS SANTA CRUZ STOP PLEASE CABLE US AT  
OUR EXPENSES WHEN RECEIVED AT YOUR END STOP  
WE ARE AT YOUR DISPOSAL FOR COLLECTING ABOVE  
ITEMS STOP APOLOGIES

INSULAIRE

yc

CHECKED

APPROVED

DATE: 1/17/75

PLF'S

DEFS EX4 11 ID#V03

R. B.

Ref Ch A

20a

Defendant's Exhibit A, Cashier or Delivery Copies  
of Confirmation Forms Reflecting, Except for  
500 Shares of C & R Clothiers, Orders Executed  
by Plaintiff on Behalf of Whitkind and Tomarkin.

*Dorsey and Company Incorporated*  
*Investment Securities*  
1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA

TELEPHONE (504) 524-543

Transaction Date

Settlement Date

Maturity Date

8/17/72

8/24/72

WILLIAMS INVESTORS  
240 E. 55th STREET  
NEW YORK, NEW YORK

WE HAVE AS OF ABOVE DATE AS PRINCIPALS  
 WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
500	C & R CLOTHIERS	18-1/8	\$9,062.50

LU 510/12  
7/2/72

F: VSP

INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			133.56			\$9,196.06

These are subject to the rules and customs  
regulations of the exchange or market where completed and to  
the S.E.C. and N.A.S.D.

When acting as agent, we will furnish on request  
the date and hour our and with whom the transaction  
was completed.

The above securities are or may  
be hypothecated under circum-  
stances to permit the commingling  
of its funds with securities of other  
customers. Such commingling, if  
any, ceases on payment by you  
of the amount indicated hereon.  
The amount indicated hereon.

WE THEREFORE AGREE

Dorsey and Company By \_\_\_\_\_

Incorporated

RJV

Incorporated

21a

Exhibit A.

*Dorsey and Company Incorporated*

*Investment Securities*

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-541

Transaction Date

Settlement Date

Maturity Date

8/17/72

8/24/72

WILLIAMS INVESTORS  
240 E. 55th STREET  
NEW YORK, NEW YORK 10022

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1000	277,404.50 TELEPROMPTER CORP.	39-7/8	\$39,875.00
		361.50	\$40,236.50

Transactions are subject to the rules and customs

of the exchange or market where completed and to

regulations of the S.E.C. and N.A.S.D.

In acting as agent, we will furnish on demand

date and place and with whom the transaction

is completed.

The above securities are or may be hypothecated under circumstances to permit the commingling of such securities with securities of other customers. Such commingling, if any, ceases on payment by you to us of the amount indicated hereon or the amount indicated by you.

WE THANK YOU

Dorsey and Company By RJV

Incorporated

Dorsey and Company By RJV

Incorporated

## Exhibit A.

*Dorsey and Company Incorporated**Investment Securities*

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-5431

Transaction Date

9/1/72

Settlement Date

9/11/72

Maturity Date

**WHITKIND REALTY**  
**847 LEXINGTON AVE.**  
**NEW YORK, NEW YORK 10021**

WE HAVE AS OF ABOVE DATE AS PRINCIPALS  
 WE HAVE AS OF ABOVE DATE AS AGENTS

**BOUGHT FOR YOUR ACCOUNT**

QUANTITY	DESCRIPTION	PRICE	AMOUNT
2000	TELEPROMPTER CORP.	40-5/8	\$81,250.00

Our transactions are subject to the rules and customs of the exchange or market where completed and to regulations of the S.E.C. and N.A.S.D.

In acting as agent, we will furnish on request date on which our and with whom the transaction was completed.

The above securities are or may be hypothecated under circumstances to permit the commingling of with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon.

WE THAI JU

Dorsey and Company By RJV  
Incorporated Incorporated

23a

**Exhibit A.**

Chancery, 1862-1870; *Compiling, Editing, Publishing*

*Insurance Securities*  
102 HARRING BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE 504-324-54

Digitized by srujanika@gmail.com

• edition • 100

#### **Maturity Date**

י. ל. ז. י

3/14/72

WILLIAMS INVESTIGATORS  
2441 E. BROAD STREET  
NEW YORK, NEW YORK 10021

WE HAVE IS OF ABOVE THAT IS PRINCIPLES  
WE HAVE IN OF ABOVE THE E. - 1000

**BLITCHER TAKES YOUR ACCOUNT**

QUANTITY

3-3-3-3-3

— 1 —

— 1 —

2-1001 THE LUMINIFORM CORP. 12-1/2 325,000.00

TRANSACTIONS ARE SUBJECT TO THE FEDERAL EXCISE TAXES. THE ABOVE AMOUNTS ARE IN U.S. DOLLARS.

communications are limited to the uses and systems  
to be exercised by normal users comprising the  
systems of G.S.C. and V.A.C. 2.

## Exhibit A.

*Dorsey and Company Incorporated**Investment Securities*

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-54

Transaction Date

Settlement Date

Maturity Date

8/21/72

8/28/72

**WILLIAMS INVESTORS INC.**  
**240 E. 55th STREET**  
**NEW YORK, NEW YORK 10022**

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

X WE HAVE AS OF ABOVE DATE AS AGENTS

**BOUGHT FOR YOUR ACCOUNT**

QUANTITY	DESCRIPTION	PRICE	AMOUNT
2000	TELEPROMPTER CORP.	41-1/2	\$83,000.00

INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			574.00			\$83,574.00

All transactions are subject to the rules and customs of the exchange or market where completed and to the regulations of the S.E.C. and N.A.S.D.

On or before the date of sale, we will furnish on request the name and address of the broker or agent with whom the transaction was effected.

The above securities are or may be hypothecated under circumstances to permit the commingling thereof with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon.

WE THAN U  
*Dorsey and Company By* RJV  
 Incorporated

Incorporated

25a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-542

Transaction Date

Settlement Date

Maturity Date

8/28/72

9/5/72

WILLIAMS INVESTORS  
240 E. 55th STREET  
NEW YORK, NEW YORK 10022

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
2000	TELEPROMPTER CORP.	38-3/4	\$77,500.00			
INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			552.00			\$78,052.00

Transactions are subject to the rules and customs or exchange or market where completed and to regulations of the S.E.C. and N.A.S.D.

When acting as agent, we will furnish on request the date and time and with whom the transaction was completed.

The above securities are or may be hypothecated under circumstances to permit the commingling of with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon.

the amount indicated hereon.

WE THANK YOU  
Dorsey and Company By RIV  
Incorporated

26a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-542

Transaction Date

8/15/72

Settlement Date

8/22/72

Maturity Date

29 days

WHITKIND REALTY  
847 LEXINGTON AVE.  
NEW YORK, NEW YORK 10021

WE HAVE AS OF ABOVE DATE AS PRINCIPALS  
 WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1000	TELEPROMPTER CORP.	41.00	\$41,000.00
1000	" "	41-1/8	41,125.00
1000	" "	41-1/4	41,250.00
			\$123,375.00

D.V.S.P.

INTEREST	ACCUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			775.50			\$124,150.00

Transactions are subject to the rules and customs exchange or market where completed and to only S.E.C. and N.A.S.D. When we furnish an agent, we will furnish on the date and with whom the transaction was completed.

The above securities are or may be hypothecated under circumstances to permit the commingling thereof with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon, less the amount indicated hereon.

WE THANK YOU  
Dorsey and Company By R.J.V.  
Incorporated

Incorporated

27a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 5...

Transaction Date

Settlement Date

Maturity Date

8/23/72

8/30/72

WILLIAMS INVESTORS  
240 E. 55th STREET  
NEW YORK, NEW YORK

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
500	TOKHEIM CORP.	23-3/8	\$11,687.50

INTEREST

ACCRUED FROM

TO

COMMISSION

TAXES

HANDLING

AMOUNT DUE

132.70

\$11,820.20

In transactions are subject to the rules and customs  
of the exchange or market where completed and to  
regulations of the S.E.C. and N.A.S.D.

When <sup>the day</sup> <sup>date</sup> <sup>is</sup> <sup>agent</sup>, we will furnish on request  
the <sup>the day</sup> <sup>date</sup> <sup>com</sup> <sup>our</sup> and with whom the transaction <sup>is</sup>  
<sup>was</sup> <sup>to</sup> <sup>ed. ad.</sup>

The above securities are or may  
be hypothecated under circum-  
stances to permit the commingling  
of securities of other  
customers. Such commingling,  
if any, ceases on payment by you  
of the amount indicated hereon.

At the amount indicated hereon.

WE THANK YOU  
Dorsey and Company By

Incorporated

Incorporated

Incorporated

RJV

## Exhibit A.

*Dorsey and Company Incorporated**Investment Securities*

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-543

Transaction Date

Settlement Date

Maturity Date

8/22/72

8/29/72

**WHITKIND REALTY**  
**847 LEXINGTON AVE.**  
**NEW YORK, NEW YORK 10021**

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

X WE HAVE AS OF ABOVE DATE AS AGENTS

**BOUGHT FOR YOUR ACCOUNT**

QUANTITY	DESCRIPTION	PRICE	AMOUNT
500	TONHEIM CORP.	23-3/4	\$11,875.00

*D.V.S., P*

INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			142.25			\$12,017.25

All transactions are subject to the rules and customs of the exchange or market where completed and to regulations of the S.E.C. and N.A.S.D. In acting as agent, we will furnish on request date of transaction and with whom the transaction took place.

The above securities are or may be hypothecated under circumstances to permit reselling, or with securities of other customers. Such reselling, if any, ceases on payment by you of the amount indicated hereon.

WE THANK YOU

Dorsey and Company By *R.W.*

Incorporated

Incorporated

29a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-541

Transaction Date

Settlement Date

Maturity Date

8/23/72

8/30/72

WILLIAMS INVESTORS  
240 E. 55th STREET  
NEW YORK, NEW YORK 10022

WE HAVE AS OF ABOVE DATE AS PRINCIPALS  
 WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
500	TOKHEIM CORP.	23-1/2	\$11,750.00

These transactions are subject to the rules and customs of the exchange or market where completed and to limitations of the S.E.C. and N.A.S.D.  
When acting as agent, we will furnish on request the date price paid our and with whom the transaction was effected.

The above securities are or may be hypothecated under circumstances to permit the commingling of with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon. If the amount indicated hereon, is less than the amount indicated hereon, the amount indicated hereon, is less than the amount indicated hereon.

WE THANK YOU  
Dorsey and Company By \_\_\_\_\_

Incorporated

RJV

30a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-5431

Transaction Date

Settlement Date

Maturity Date

8/22/72

8/29/72

WILLIAMS INVESTORS  
240 E. 55th STREET  
NEW YORK, NEW YORK 10022

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
500	TOKHEIM CORP.Q	23-3/4	\$11,875.00

D.V.S.R.

INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			142.25			\$12,017.25

All transactions are subject to the rules and customs of the exchange or market where completed and to regulations of the S.E.C. and N.A.S.D.

When acting as agent, we will furnish on request the name of your and with whom the transaction was made.

The above securities are or may be hypothecated under circumstances to permit the commingling thereof with securities of other customers. Such securities, if any, ceases on payment by you of the amount indicated, you will be entitled to the same secured hereon.

WE THANK YOU  
Dorsey and Company By

Incorporated  
1911

RJV

31a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-5431

Transaction Date

Settlement Date

Maturity Date

8/23/72

8/30/72

WILLIAMS INVESTORS  
240 E. 55th STREET  
NEW YORK, NEW YORK

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
200	TOKHEIM CORP.	23-1/4	\$4,650.00

ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
		53.08			\$4,703.08

All transactions  
of the exchange  
regulations or market where  
the action of S.E.C. and N.A.S.D.  
is taken, we will furnish on request  
as to agent, and with whom the transaction  
is made.

The above securities are or may  
be hypothecated under circum-  
stances which permit the commingling  
of securities of other  
customers. If you  
cease to pay by you  
of the amount indicated  
thereon.

WE THANK YOU  
Dorsey and Company By \_\_\_\_\_

Incorporated  
Incorporated

RJV

32a

## Exhibit A.

*Dorsey and Company Incorporated**Investment Securities*

1012 HIBERNIA BUILDING - NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-5431

Transaction Date

Settlement Date

Maturity Date

9/11/72

9/18/72

WILLIAMS INVESTORS INC.  
 240 E. 55th STREET  
 NEW YORK, NY 10022

WE HAVE AS OF ABOVE DATE AS PRINCIPALS  
 WE HAVE AS OF ABOVE DATE AS AGENTS

## BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
300	TOKHEIM CORP.	22-1/2	\$6,750.00

All " are subject to the rules and customs  
 of the exchange or market where completed and to  
 regular S.E.C. and N.A.S.D.

When acting as agent, we will furnish on request  
 the name of our and with whom the transaction  
 completed

The above securities are or may  
 be hypothecated under circum-  
 stances to permit the commingling  
 of with securities of other  
 customers. Such commingling  
 may, ceases on payment by you  
 of the amount indicated.

100.75

\$6,750.75

WE THANK YOU

Dorsey and Company By \_\_\_\_\_  
Incorporated

RJV

## Exhibit A.

*Dorsey and Company Incorporated**Investment Securities*

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-542

Transaction Date

8/15/72

Settlement Date

8/22/72

Maturity Date

**WILKIND REALTY**  
**847 LEXINGTON AVE.**  
**NEW YORK, NEW YORK 10021**

 WE HAVE AS OF ABOVE DATE AS PRINCIPALS WE HAVE AS OF ABOVE DATE AS AGENTS**BOUGHT FOR YOUR ACCOUNT**

QUANTITY	DESCRIPTION	PRICE	AMOUNT
500	SYNTEX CORP.	99-1/2	\$49,750.00

*D.VS P.*

INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			325.00			\$50,075.00

If transactions are subject to the rules and customs of the exchange or market where completed and to whom such transaction is made, we will furnish on request the date of completion, we will furnish on request the name and address of the agent, and with whom the transaction was completed.

The above securities are or may be hypothecated under circumstances to permit the commingling thereof with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon.

WE THANK YOU  
*Dorsey and Company By RJV*  
 Incorporated

## Exhibit A.

*Dorsey and Company Incorporated*

*Investment Securities*

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-543

Transaction Date

Settlement Date

Maturity Date

8/15/72

8/22/72

WHITKIND REALTY  
848 LEXINGTON AVE.  
NEW YORK, NEW YORK 10021

WE HAVE AS OF ABOVE DATE AS PRINCIPALS  
 WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
400	C & R CLOTHIERS	17.00	\$6,800.00

*J.V.S.P.*

INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			107.20			\$6,907.20

All transactions are subject to the rules and customs of the exchange or market where completed and to regulations of the S.E.C. and N.A.S.D.

When acting as agent, we will furnish on request the name and address with whom the transaction is completed.

The above securities are or may be hypothecated under circumstances to permit the commingling thereof with securities of other customers. Such commingling, if any, ceases on payment by us of the amount indicated hereon.

WE THANK YOU  
Dorsey and Company By  
Incorporated

RJV

35a

Exhibit A.

*Dorsey and Company Incorporated*

*Investment Securities*

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-543

Transaction Date

Settlement Date

Maturity Date

8/15/72

8/22/72

WHITKIND REALTY  
847 LEXINGTON AVE.  
NEW YORK, NEW YORK 10021

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
300	C & R CLOTHIERS	17-1/4	\$5,175.00

D.J.S.P.

INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			86.58			\$5,261.58

is are subject to the rules and customs  
of the exchange or market where completed and to  
regulations of the S.E.C. and N.A.S.D.

When actions are taken, we will furnish on demand  
with whom the transfer is to be made.

The above securities are or may  
be hypothecated under circumstances  
to permit the commingling  
of with securities of other  
customers. Such commingling,  
any, ceases on payment by  
of the amount indicated  
of the amount indicated hereon.

WE THANK YOU  
*Dorsey and Company By*

*Incorporated*

**DJV**

36a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-543

Transaction Date

Settlement Date

Maturity Date

8/15/72

8/22/72

WHITKIND REALTY  
847 LEXINGTON AVE.  
NEW YORK, NEW YORK 10021

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
300	C & R CLOTHIERS	17-1/4	\$5,175.00

DVS. P.

INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			86.58			\$3,261.58

The above securities are or may  
be hypothecated under circum-  
stances to permit the commingling  
of such securities with those  
of other persons. Such commingling, if  
any, will be at the risk and expense  
of the holder and will not affect  
the amount indicated hereon.

WE THANK YOU  
Dorsey and Company By RJV  
Incorporated

37a

## Exhibit A.

*Dorsey and Company Incorporated*  
*Investment Securities*

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

Transaction Date  
8/17/72Settlement Date  
8/24/72

Maturity Date

WILLIAMS INVESTORS  
240 E. 55th STREET  
NEW YORK, NEW YORK

WE HAVE AS OF ABOVE DATE AS PRINCIPALS  
 WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
500	C & R CLOTHIERS	17-7/8	\$8,037.50			
INTEREST	ACCrued FEE	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			132.44			\$9,069.94

All transactions are subject to the rules and customs of the exchange or market where completed and to regulations of the S.E.C. and N.A.S.D.

When acting as agent, we will furnish on request the date and hour and with whom the transaction was completed.

The above securities are or may be hypothecated under circumstances to permit the commingling of with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon.

WE THANK YOU  
Dorsey and Company By \_\_\_\_\_  
Incorporated

RJV

Defendant's Exhibit C, Notice of Decision of a Complaint against Plaintiff by Business District No. 5 of the National Association of Securities Dealers.

BEFORE THE BOARD OF GOVERNORS

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of	:	
District Business Conduct Committee	:	
For District No. 5	:	
Complainant	:	<u>DECISION</u>
vs.	:	
Dorsey & Company, Inc.	:	<u>Complaint No. N-217</u>
1012 Hibernia National Bank Building	:	
New Orleans, Louisiana 70112	:	<u>District No. 5</u>
and	:	September 27, 1974
George P. Dorsey, President	:	
Robert J. Vedros, Secretary-Treasurer	:	
Respondents	:	

This matter was appealed to the Board of Governors pursuant to the provisions of Section 15 of the Association's Code of Procedure for Handling Trade Practice Complaints. In its Decision dated February 28, 1974, District Business Conduct Committee for District No. 5 censured respondent Dorsey & Company, Inc., a member, New Orleans, Louisiana, and suspended it from membership in the Association for a period of five days, censured respondents George P. Dorsey and Robert J. Vedros, registered principals, and suspended each from association with any member of the Association in any capacity for a period of five days. In addition, respondent member and the individual respondents were, jointly and severally, assessed costs of the proceedings in the amount of \$924.36.

The District Committee found that the individual respondents, acting through the member, had submitted an inaccurate and misleading 17a-10 Report for the year ending December 31, 1972, and had submitted false and misleading Form M and Form Q Reports for the month end periods from February through June, 1973. The Committee further

## Exhibit C.

- 2 -

found that respondents' conduct constituted violations of Article III, Sections 1 and 21(a) of the Association's Rules of Fair Practice and was inconsistent with just and equitable principles of trade. The Committee also dismissed allegations that the respondents' conduct involved the use of manipulative, deceptive or fraudulent devices in contravention of Article III, Section 18 of the Rules of Fair Practice.

The Decision was appealed by all respondents on March 13, 1974. Subsequently, on April 25, 1974, a hearing was held in the Association's office in Kansas City, Missouri. Respondents Dorsey and Vedros appeared and were represented by counsel who also represented the interests of the respondent member.

At the hearing respondents' counsel admitted the violations but stated that respondents felt the penalties were basically unfair and not commensurate with the gravity of the violations. He stated that the member's violations were not the result of any intent to mislead or deceive the regulatory authorities but were the result of mere inadvertence. He stated that respondents' conduct does not justify a suspension but a censure and a fine were more appropriate penalties. Counsel further contended that he believed that respondent's prior disciplinary history had unduly prejudiced the members of the District Committee against him. He also contended that a review of their disciplinary history could lead one to fairly conclude that the member had been an object of persecution by the staff and committee of District No. 5. He reviewed what he contended to be the hostile attitude of the District Committee during the District hearing. He also contended that the staff of the District placed more emphasis upon reviewing the member's books and records to find violations upon which to initiate a complaint than they did upon helping the member to remedy its errors which counsel felt was the proper function of the Association. Further, in reviewing the history of disciplinary actions involving the member respondents' counsel stated that the letters of caution and the five formal complaint actions dating from 1960 through 1973 reflected only two serious violations: net capital violations in 1967 and Regulation T violations in 1973. With regard to the former, counsel contended that the violations were merely technical in nature and that at no time was there any risk to the public. With regard to the latter, counsel contended that the practice for which the member was found in violation of Regulation T was common throughout District No. 5 and the industry as a whole, that the Association was aware of this practice and that respondents in effect had been made an object lesson.

With regard to the inaccurate and late filing of the 17a-10 Report for 1972, respondents stated that they encountered difficulties in calculating the required information because the member's fiscal year ends on

## Exhibit C.

- 3 -

June 30 rather than December 31 and the process used to extract the calendar year figures left a margin for error. Respondents stated that after the Association had indicated there were errors on the calculations, as reported, they immediately conferred at length with both the Washington and District Offices to determine the extent and reason for the miscalculations. Respondents stated that after these discussions the 17a-10 form was amended and refiled giving the same treatment to the Williams account as it had received when the 17a-10 was initially filed. Although respondents did not defend and did admit the inaccuracies which appeared on the original 17a-10 Report, they stated that their amended form 17a-10 did not necessitate any changes to the entries on the member's books and records. While admitting the inaccuracies, respondents contended, in mitigation, that there was never any intention on the part of the member or its principals to mislead the Association, that the inaccuracy was the result of misapplication and miscalculation of information appearing on the member's books and records and that their errors did not represent any failure to understand the Association's rules and regulations. Further, respondents stated that at no time during the course of these proceedings was there any allegation of a violation of the net capital rule. In addition, respondents stated that the fact that there was no deliberate deception should be apparent in view of the District Committee's dismissal of allegations of a Section 18 violation. With regard to the member's future submission of regulatory forms, respondents stated that all forms would henceforth be drafted and prepared by accountants prior to being reviewed and forwarded to the Association by the member. In addition, according to respondent Vedros and contrary to the phraseology of the District Decision, the member filed Forms M and Q with the Association in a timely manner. However, respondent Vedros did admit that the member had filed the 17a-10 Report late and that this form was requested by the Association prior to its submission by the member.

With regard to the Form Q violations, the respondents stated that the member is willing to admit that it possibly submitted inaccurate forms. However, the respondents objected to the fact that the amended Form Q which was changed as a result of the Williams account transaction following a discussion with the Association's staff resulted in the issuance of a complaint based upon information brought forth during these discussions. Further, although the respondents admitted that there was some dispute between themselves and the District Committee over the proper treatment of the Williams account, they contended that whether the Williams account was treated as an unsecured receivable or as a customer receivable for net capital computations, there would not have been a net capital violation in either case. With regard to the circumstances surrounding the treatment of the Williams account, respondent Dorsey stated that at the time of the violations he had been doing business with the account for approximately

## Exhibit C.

- 4 -

one year. He stated that when the securities drafted for collection became lost the bank placed a tracer on the securities and when the bank could still not locate the securities, the member made an immediate claim against the bank so that it could proceed if necessary against the bank's insurers instead of against its own insurer. Respondent Dorsey stated that the member also filed a claim to have the securities reissued and instituted stop-payment procedures with the transfer agent. He stated that the securities were ultimately found four months after they became lost. Respondent Dorsey stated that during the period when the securities were lost the member treated the securities as customer receivable for purpose of net capital computations since the customer continued to indicate that he still wanted the stock. Further, he stated that the bank had seven days in which to cover the transaction. Respondent Dorsey stated that when the customer finally indicated that he could not and would not pay for the securities they were promptly liquidated by the member. Respondent Vedros stated that the member in computing its net capital in this matter had always considered the possibility of an unrealized loss on the securities which were lost.

With regard to the violations concerning Form M submissions, the respondents stated that Form M was not false and misleading since its contents were fully discussed with the Association's staff and there was no attempt to withhold information or deceive the Association in any way.

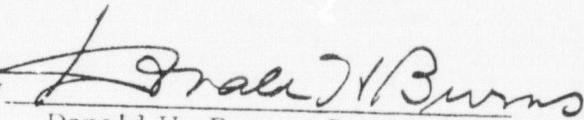
In concluding their testimony, respondents stated that they were not contending that they had treated the Williams account accurately nor that they had accurately filed Forms M, Q and 17a-10, but stated that, under the circumstances, they believed that a censure and a \$500 fine would be a more appropriate penalty. Respondents contended that they were not shifty or devious and that they were indeed a credit to the industry. Respondents again stated that although the forms they are required to complete and submit to the Association are complicated, the errors in the forms they submitted were inadvertent and not made with any intention to deceive the Association. In addition, respondents stated that since this complaint was initiated the Securities and Exchange Commission has examined the member's books and records and has found no problems with its operations. In summary, the respondents stated that they did not believe that a five day suspension with its resultant publicity is justified by the facts here present, particularly since in the future accountants will be employed to complete all forms submitted to regulatory agencies by the member. In addition, counsel for the respondents stated that respondent Dorsey is aware of the fact that he is personally responsible for all actions of respondent Vedros and, consequently, is continually overseeing respondent Vedros' activities.

## Exhibit C.

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We have reviewed the record in its entirety and we can find no basis for altering or modifying the findings of the District Committee. Accordingly, such findings are hereby affirmed. However, we believe that some modification of the penalties is in order. In reaching this conclusion we have carefully weighed the testimony of respondents. We note that respondents have admitted that they have improperly and inaccurately completed Forms M, Q and 17a-10 submitted by them to the Association. However, we believe that the improper 17a-10 calculations were the result of an inadvertent error and were most probably not the result of any intention to deceive the Association. We have also noted that despite the improper calculations and the treatment given the Williams account for net capital computation purposes, the member would not in any case have been placed in net capital deficiency. Under the circumstances, while we do not in any way condone the submission by the respondents of inaccurate information to the Association, we do not believe that the public interest or our regulatory responsibilities necessitate suspensions. Nevertheless, we believe the violations were serious and warrant the imposition of a substantial fine. Consequently, we hereby reduce the penalties imposed by the District Committee from censure and suspension of each respondent for a period of five days to censure of each respondent and a fine in the amount of \$5,000 upon respondents, jointly and severally. In addition, we affirm costs of the proceedings assessed by the District Committee as to all respondents.

On Behalf of the Board of Governors,

By   
Donald H. Burns, Secretary

## Exhibit C.

BEFC THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
DISTRICT BUSINESS CONDUCT COMMITTEE NO. 5

In the Matter of . . . . .  
District Business Conduct Committee . . . . .  
For District No. 5 . . . . .  
COMPLAINANT . . . . .  
vs. . . . .  
Dorsey & Company, Inc. - MEMBER . . . . .  
1012 Hibernia National Bank Building . . . . .  
New Orleans, Louisiana 70112 . . . . .  
and . . . . .  
George P. Dorsey, President . . . . .  
Robert J. Vedros, Secretary-Treasurer . . . . .  
RESPONDENTS . . . . .  
DECISION . . . . .  
Complaint No. N-217 . . . . .  
February 28, 1974 . . . . .

This Complaint was filed by the District Business Conduct Committee for District No. 5 of the National Association of Securities Dealers, Inc., on September 13, 1973, and named as Respondents, Dorsey & Company, Inc., Member and George P. Dorsey and Robert J. Vedros, Registered Principals. The Complaint resulted from the Committee's review of the report of a special examination of the Respondent Member's books and records which was conducted by a representative of this Committee during May 1973 and from information gathered during the course of a staff conference with the Respondents on July 13, 1973. The Complaint, in three (3) separate causes of action, charges separate and distinct violations of Sections 1, 18 and 21(a) of Article III of the Rules of Fair Practice.

The Respondents, on September 23, 1973, submitted a common written Answer to the Committee's charges and requested a hearing in the matter. However, on October 3, 1973, Respondent Vedros, writing on behalf of the Respondents, advised the Committee that although they had previously submitted the subject written Answer, it was now their intention, at a later date, to submit a formal Offer of Settlement. Not having received such an Offer, the Committee, on its own motion on November 5, 1973, set the matter down for hearing. The hearing was conducted in the Association's District No. 5 office, commencing at 10:00 a.m. on Friday, November 30, 1973 before a sub-Committee consisting of seven of the nine members of the District

## Exhibit C.

Business Conduct Committee as then constituted. Respondents George P. Dorsey and Robert J. Vedros appeared on their own behalf and that of the Respondent Member. All Respondents were represented by counsel.

One hour prior to that time, the Respondents, with counsel, appeared before the hearing sub-Committee and orally submitted a joint Offer of Settlement which imposed a penalty of censure and monetary fine of \$500. Thereafter, the sub-Committee, during a closed session, considered the Offer and unanimously determined that it was unacceptable, and so advised the Respondents and their counsel, all of whom thereupon requested that the hearing proceed as scheduled.

The District Business Conduct Committee, after review and consideration of the entire written record in this proceeding, has adopted the following Decision:

RESPONDENT'S BACKGROUND

Dorsey & Company, Inc. became an Association Member on June 22, 1959. The Member, as of the November 1973, date of hearing, employed nine (9) persons, two (2) of whom were registered with the Association as registered representatives and the two individually named Respondents as Principals. It maintains no branch offices and conducts a general securities business with primary emphasis on the retailing of corporate and municipal bonds.

Respondent George P. Dorsey is President, majority stockholder, and the chief operating head of Dorsey & Company, Inc., and is registered with the Association as a Principal. His background in the field of securities dates back approximately 27 years.

Respondent Robert J. Vedros is Secretary-Treasurer, one (1) of two (2) minority stockholders of the Respondent Member, and is registered with the Association as a Principal. His background in the field of securities dates back approximately 11 years, to when he first became associated with the Respondent Member.

The Respondent Member, prior to the instant proceeding, has been the subject of a number of letters of caution and at least five (5) formal complaint actions, N-34, N-82, N-130, N-134 and N-199,

## Exhibit C.

by this Committee, as then constituted. Respondent George P. Dorsey was named a Respondent in each of the five separate actions while Respondent Vedros was named a Respondent in only the last three styled actions.

An analysis of those actions reveals the following facts:

Complaint No. N-34 (1960)

The Member and Respondent Dorsey, each separately, were found to have violated Regulation T--Section 4(c)(2) in connection with 67 separate transactions out of 450 transactions under review. As a result of such findings they were censured and fined \$1,000., which penalty was affirmed by the Board of Governors upon review.

Complaint No. N-82 (1962)

The Member and Respondent Dorsey, each separately, were found to have violated Regulation T--Sections 4(c)(2) and 4(c)(8), in connection with twenty-nine (29) separate transactions; failure to give timely notification to another Member of the Association of an account carried by the Member in the name of a registered representative of the other Member; failure to evidence approval by written endorsement on certain copies of the firm's order memoranda; and failure to comply with the SEC's record-keeping rule in that during an approximate two year period, its books and records were not proper nor kept on a current basis. Those findings resulted in a censure and a monetary fine in the amount of \$1500. plus costs against the Respondents. The penalty in connection with that matter was left undisturbed by the Board of Governors upon its review of the matter.

Complaint Nos. N-130 and N-134 (1967)

In a consolidated Decision, the Committee, as then constituted, found violations against the Member and Respondents Dorsey and Vedros, each separately, of the Securities and Exchange Commission's Net Capital Rule as of each month-end date in the period from April 30, 1966 through August 31, 1966 and also on October 31, 1966. Specifically, that Committee found that at the end of each month the Member's adjusted net capital was a deficit figure with the amount of the deficits ranging as high as \$203,928.80 on May 31, 1966. According to the Committee's findings the amount of additional capital needed to be in compliance with the net capital rule ranged from a high of about \$240,000. on May 31, 1966 to a low of about \$43,000. on October 31, 1966.

## Exhibit C.

The Committee also found improper hypothecation of customers' fully paid securities; failure to keep proper books and records; filing of an inaccurate amendment to the Member's application for membership in the Association, and failure to act promptly to file a corrected amendment after notice of the inaccuracies; failure in certain instances to include on customer statements a "free credit balance" legend; failure to give timely notification to another member of the Association of an account carried by the Member in the name of a registered representative of the other Member; and failure in certain instances to send proper "third market" confirmations. The Committee's Decision suspending the Member from membership in the Association for eighteen months and likewise the registration of Respondents Dorsey and Vedros for an eighteen month period, plus monetary penalties, for the Respondents totaling some \$4,500. was appealed by all Respondents to the Board of Governors. In its subsequent Decision it affirmed all findings of rule violations as well as the fines and costs imposed by the District Committee but modified the penalties by reducing the penalties of suspension imposed by the District Committee to suspension for thirty days as to all Respondents. In that connection, the record shows that the 30-day suspension for the firm and Respondent Vedros commenced with the opening of business January 6, 1969 and concluded at the close of business February 4, 1969. The 30-day suspension of Respondent Dorsey commenced with the opening of business February 5, 1969 and concluded at the close of business March 6, 1969.

Complaint No. N-199 (1973)

The Member and Respondents Dorsey and Vedros, each separately, were found to have violated Regulation T, Sections 4(c)(2); 4(c)(5) and 4(c)(8) in connection with 52 separate transactions and the SEC's record-keeping rule for their failure to prepare and maintain the firm's books and records in the manner and detail required by that rule in that they recorded at least 31 separate transactions to its various books and records in a manner that reflected executions on dates other than the actual dates on which the transactions were executed. The penalty imposed in connection with that matter consisting of censure and a monetary fine of \$10,000. plus costs in excess of \$1,000. was left undisturbed by the Board of Governors upon its review of the matter.

## Exhibit C.

SUMMARY OF COMPLAINT AND ANSWERThe Complaint

The Complaint, in three (3) separate causes of action, charges the Respondents, each separately, with separate and distinct violations of certain sections of Article III of the Rules of Fair Practice, summarized as follows:

FIRST CAUSE: Alleges separate and distinct violations of Sections 1 and 21(a) by the Respondents, each separately, when on or about May 30, 1973, the Respondent Member, acting through Respondents Dorsey and Vedros, completed and submitted to the Association, at its request, the firm's Form 17A-10 which detailed thereon the Respondent Member's annual report of income and expenses for the calendar year of 1972, which report was inaccurate and misleading.

SECOND CAUSE: Alleges separate and distinct violations of Sections 1, 18 and 21(a) by the Respondents, each separately, when on or about March 20, 1973, and on or about June 29, 1973, respectively, the Respondent Member, acting through Respondents Dorsey and Vedros, completed and submitted to the Association, at its request, the firm's Forms "Q," which detailed thereon the Respondent Member's financial conditions, as at the month-end February and May 1973, respectively, including computation of its net capital and aggregate indebtedness, completed in accordance with Securities and Exchange Commission Rule 15c3-1 which filings were false and misleading.

THIRD CAUSE: Alleges separate and distinct violations of Sections 1, 18 and 21(a) by the Respondents, each separately, when during the period from on or about March 12, 1973, through on or about July 11, 1973, the Respondent Member, acting through Respondents Dorsey and Vedros, completed and submitted to the Association, at its request, the firm's Form "M" which reflected the firm's financial conditions as at the month-end February through June 1973, which filings also were false and misleading.

The Answer

With respect to the allegations contained in the first cause of complaint, the Respondents contend that the inaccurate filing of the firm's Form 17A-10 can be directly associated to the fact that the fiscal year of the Respondent Member ends on June 30<sup>th</sup>, therefore, the figures reported to the Association were obtained by using the figures as of December 31<sup>st</sup> of the current fiscal year to

## Exhibit C.

which they added the figures for the end of the previous fiscal year (June 30th) and then deducted those figures for the first half of that prior fiscal year. This procedure, they claim, is complex, therefore the margin for miscalculation is increased.

Commenting with respect to the allegations contained in the second and third causes of complaint, the Respondents contend that the major difference of the figures in question as reported to the Association on Forms "Q" and "M" is simply in the application by the firm, of certain unsecured receivables. They claim if there were any variations in the figures filed, it was due to a lack of understanding and/or a lack of knowledge by the firm in connection with the submission of the reports, but in no event were such figures meant to be misleading because the supporting data maintained by the firm is the final evidence.

Finally, in mitigation, the Respondents argue that in the past, all of the firm's reports have been filed by only one person (Respondent Vedros), thus not any was ever "cross checked" by any other individual. As a result of this complaint, however, they claim, the firm has immediately instituted certain procedures and/or measures whereby in the future all reports filed by the firm will be under the direct supervision of its auditors, who in the meantime, have fully discussed this proposal with certain members of the Association's District staff.

FACTS, FINDINGS AND CONCLUSIONSInaccurate and Misleading Form 17A-10

## (First Cause)

SEC Rule 17a-10 under the Securities Exchange Act of 1934 provides, among other things, for the annual income and expense reports of Exchange Members and broker-dealers to be filed with the Commission or with a registered self-regulatory organization (NASD) which will transmit the reports to the Commission. The major purpose of the report is to provide needed comprehensive financial data on a continuing basis so that up-to-date information will be readily available to the Commission, the national securities exchanges and to the Association in connection with the performance of their respective responsibilities. Accordingly, every Member of a national securities exchange and every broker or dealer

## Exhibit C.

registered pursuant to Section 15 of the Act shall no later than  
120<sup>1/</sup> days after the close of each calendar year (commencing with  
the calendar year 1969), file a report of his income and expenses  
and related financial and other information for such calendar year  
on Form X-17A-10.

The record shows that on or about May 10, 1973, when the Association's Executive Office had failed to receive the Respondent firm's 17A-10 report for calendar year 1972, (due on March 31, 1973), that office transmitted, in writing, a notice addressed to Dorsey & Company, Inc. to that effect. Upon receiving that notice, the member thereafter advised the Executive Office that it had failed to receive the proper forms, consequently, it was unable to comply with the filing requirements outlined in such notice. Because of that advice, the Executive Office immediately thereafter placed into the mails to the Member several copies of the subject form. According to the record, after having received such forms, the Respondents completed at least one copy and on or about May 30, 1973, they submitted, to the Executive Office, that copy which detailed thereon the firm's annual report of income and expenses for the calendar year 1972.

On or about June 28, 1973, according to the record, the Executive Office, by telephonic means, notified staff representatives of this Committee that upon reviewing the 17A-10 report filed by the Member it had determined that the report, as filed, was inaccurate because the figures appearing in the "Capital Funds Section" of the report appeared to be out-of-balance. The record in this respect shows that immediately thereafter, as a result of that call, representatives of this Committee informed the firm's principals that certain inaccuracies appeared to exist on the 17A-10 report they had previously filed. The record further shows that a conference between the Respondents and a staff examiner was thereafter held in the Member's office which culminated in its filing an amended 17A-10 form with the Association on or about July 9, 1973.

1/ The NASD's plan provides that members of the Association will be required to file NASD Form 17A-10 with the Association no later than March 31st of each year subsequent to 1969.

## Exhibit C.

The first Cause of Complaint alleges that on or about May 30, 1973, when the Respondent Member, acting through Respondents Dorsey and Vedros, completed and submitted to the Association, at its request, the firm's Fcrm 17A-10 containing details thereon with respect to the Member's annual report of income and expenses for the calendar year of 1972, which contained figures in the "Capital Funds Section" of said report that did not balance, it did so knowing full well that such report was inaccurate and misleading for the reasons more fully detailed on Exhibit "A" attached to the Complaint and to this Decision.

The Respondents, both in their written Answer and at the hearing, admit that such report, as originally filed with the Association on or about May 30, 1973, was inaccurate for the reasons detailed on the designated Exhibit but, in mitigation, they contend that such inaccuracies or errors could be directly associated to the fact that the fiscal year of Dorsey & Company, Inc. ends on June 30th, therefore, the figures they reported to the Association, in this connection, were obtained by using the figures appearing on the firm's books and records, as of December 31st of the current fiscal year to which they added the figures for the end of the firm's previous fiscal year (June 30th) and then deducted from that amount those figures for the first half of that prior fiscal year. This procedure, they claim, is a complex one, hence, the margin for miscalculation, or error, is very greatly increased. Too, they contend, in mitigation, that for a long, long while all reports filed by the firm with the NASD and other regulatory agencies have been prepared exclusively by Respondent Vedros without the benefit of review or cross-check by anyone else in the firm. This fact, they further claim, adds still another measure of chance for miscalculation or error.

Accordingly, we find that such acts, practices and conduct constitute separate and distinct violations of Sections 1 and 21(a) of Article III of the Rules of Fair Practice by the Respondent Member, Dorsey & Company, Inc., and George P. Dorsey and Robert J. Vedros, the individuals responsible for the acts of the Respondent Member, each separately, as alleged in the first Cause of Complaint. We further find such conduct to be inconsistent with just and equitable principles of trade.

## Exhibit C.

False and Misleading Forms "Q",  
(Second Cause)

The Board of Governors in May 1970, adopted a resolution requiring members of the Association to file quarterly financial reports. The purposes of the report are twofold: (a) to provide the Association with an "early-warning system" for detecting an impending critical financial situation in a given firm; and (b) to furnish current data relating to the economic stability and growth of the industry. Form "Q" must be executed and filed with the Association four (4) times each year by every Member of the Association.

The record shows, and it is alleged in this Second Cause of Complaint, that on or about March 20, 1973, and on or about June 2, 1973, respectively, Dorsey & Company, Inc., acting through its two principal officers, Respondents Dorsey and Vedros, completed and submitted to the Association, at its request, the firm's Forms "Q" which forms detailed thereon the Respondent firm's financial condition as at month-end February and May 1973, respectively, including computations of its net capital and aggregate indebtedness, completed in accordance with SEC Rule 15c3-1, which separate filings were false and misleading for the reasons more fully detailed on Amended Exhibits "B" and "C" attached to the Complaint and to this Decision.

The Respondents, both in their written Answer and at the hearing, claim that the major difference between the figures submitted to the Association in connection with these particular reports and those figures verified by the Association's examiner during the course of his review of the firm's books and records subsequently thereafter, rests solely in the way certain receivables (recorded on the firm's books and records during the periods under question), are treated by the Association's staff and this Committee. If there are any variations in the figures filed by the firm in connection with those separate reports and those figures compiled by the examiner during his review, that variation, they claim, is entirely due either to a lack of understanding or to a lack of knowledge on their part, as to the proper treatment of such items for purposes of the SEC's Net Capital Rule. In any event, they further contend, whatever the variations may be when comparing the two sets of figures, it certainly was never their intention to mislead the Association in any way whatsoever, since at all times, the supporting data for these reported figures was correctly recorded on its books and records, and that was the final evidence.

## Exhibit C.

As previously noted, amended Exhibits "B" and "C" attached hereto more fully detail the facts with respect to the charges embodied in this Cause of Complaint. In this connection the record shows that prior to the hearing in this matter, a representative of this Committee, on November 21, 1973, hand-delivered, to the Respondents, these two separate exhibits designated as "Amended Exhibits "B" and "C", which documents had been prepared by the staff in early November 1973, at our instructions, when we reviewed the subject Complaint and made the determination to set the matter down for a hearing.

We have considered and rejected the Respondents contention that the alleged inaccurate and misleading filings of the firm's Forms Q, on two separate occasions here under question, arose due to their unfamiliarity with the Association's method of treating certain receivables which may appear on a member's financial statement. The test of admissability of assets, the Respondents must certainly know, is not the intrinsic value of the particular item, but rather whether or not such item is immediateiy convertible into cash.

The major item at issue in the instant proceeding concerns an item classified by the Member as a so-called receivable which developed as a result of the purchase by its account Williams Investors of certain securities amounting to approximately \$342,000 in a payment vs. delivery account set up and maintained for that purpose on the firm's books and records. Those transactions, according to the record, were executed by the firm for that account during the period from on or about August 17, 1972 through on or about September 11, 1972, and in that connection, according to the record, the account ultimately regened on the contract, thereby causing losses to the firm amounting to \$214,000.

According to testimony of the Respondents, during the course of the hearing, the securities (7,000 shares Teleprompter; 1,000 shares C & R Clothiers, and 2,000 shares of Tokheim) were drafted for collection by the firm's local bank to the Williams account in a single item on or about September 25, 1972. Soon thereafter, they have testified, it was learned by a telephone call from their bank on or about September 29, 1972 that the securities were lost through its drafting procedures. As a result of that notice, they said the firm immediately

## Exhibit C.

made a general journal entry cancelling the subject entries in the Williams customer ledger account and created a "customer receivable" item in the firm's general ledger. However, on or about December 29, 1972, according to them, the subject securities were located by the bank, and immediately thereafter, they advised the bank to redraft the item for collection, and in that connection, according to them, the original journal entry was reversed on the firm's books and records. The item, however, remained uncollectible until on or about February 2, 1973, when, on that date, the subject draft was returned to their bank with a notation that it had been refused by the Williams account. As a result of that advise, they further state, they were prompted then to create still another journal entry to the firm's books and records, which entry set the item up as a customer receivable (including certain bank charges in the amount of \$2,267.50 covering the drafts). This entry or so-called receivable, the record shows, remained on the firm's books and records until on or about June 29, 1973, when the firm liquidated the securities covering that item for approximately \$130,000, thereby resulting in a loss to the firm of approximately \$214,000.

It is uncontested that the Respondent firm's Forms "Q" prepared and submitted to the Association by the individually named Respondents for the periods ending February and May 1973, were inaccurate in that inadmissible assets totaling some \$200,000 were not deducted by the Respondents from the firm's net worth figures appearing on the respective forms in order for them to reach an appropriate adjusted net capital figure. This amount, as the record clearly shows, consisted of the unsecured receivables in the Williams Investors account and should have been charged to capital in the firm's computation of its net capital, pursuant to SEC Rule 15c3-1.

Accordingly, we find that such acts, practices and conduct constitute separate and distinct violations of Sections 1 and 21(a) of Article III of the Rules of Fair Practice by the Respondent Member, Dorsey & Company, Inc. and George P. Dorsey and Robert J. Vedros, the individuals responsible for the acts of the Respondent Member, each separately, as alleged in the second Cause of Complaint. We further find such conduct to be inconsistent with just and equitable principles of trade. We are convinced, however, from our review of the record, that it will not support a separate finding of violation of Section 18 of the cited Rules, as alleged. Accordingly, that allegation is dismissed.

## Exhibit C.

False and Misleading Forms "M"

(Third Cause)

The requirement to file Form "M" was instituted by the Board of Governors on a nationwide basis in February of 1973. This brief recap of a member firm's financial and operational condition at month end intervals is an integral part of the Association's early-warning system for the detection of potential financial problems. It provides the Association's several District Offices located throughout the nation with the regulatory ability to act at times before a member's financial deterioration reaches crisis proportions. Form "M" must be executed and filed with the Association's District Office by every member of the the Association in the office in which District the respective member's main office is located, on a monthly basis and such report must be received in that District Office no later than the close of business on the 10th calendar day following the previous month-end.

The third Cause of Complaint alleges that during the period from on or about March 12, 1973, through on or about July 11, 1973, (complaint erroneously stated June 11, 1973), the Respondent, Dorsey & Company, Inc., acting through its two principal officers, Respondents Dorsey and Vedros, executed and submitted to the Association's District No. 5 office, at its request, the firm's Forms "M", which reflected thereon the Member's financial condition for each of the month-ending periods February through June 1973, and in that connection such filings were false and misleading for the reasons more fully detailed on Amended Exhibit "D" attached to the Complaint and to this Decision.

In their Answer, and at the hearing, the Respondents contended, as they likewise did in connection with the matter embodied in the above Cause of Complaint, that any difference between the figures which it submitted to the District Office when filing the firm's monthly Form "M" and the figures which actually appeared on its books and records and were verified by the examiner, rests solely in the way the Respondents and the Association's staff interprets or treats the Williams Investors account that the firm had classified as a receivable or as an allowable asset item.

## Exhibit C.

Amended Exhibit "D" attached hereto more fully details the facts with respect to the charges embodied in this Cause of Complaint and we feel that no useful purpose would be served here for us to elaborate further on the subject of the Williams Investors Account, except for us to state that we have considered and rejected as we did in the second Cause above, the Respondents' contention that the alleged inaccurate and misleading filings of the firm's Forms "M" during the period under question was due to their lack of knowledge or unfamiliarity as to how the Association, under provisions of the SEC's Net Capital Rule 15c3-1, treated items of this nature.

We cannot emphasize forcefully enough the importance that we attach to the adherence to the Commission's Net Capital Rule by all broker/dealers including the Respondent, Dorsey & Company, Inc. A broker/dealer must insure that it is able, at all times, to promptly meet the demands of its customers and this is the reason that the subject Rule provides that assets not readily convertible into cash must be, and are excluded from, a firm's net capital, and we have traditionally held that items such as the Williams account are not readily convertible into cash for purposes of the Net Capital Rule, if in fact, such item is unsecured.

We believe the record sufficiently demonstrates that the Williams account was unsecured. The only additional evidence proffered by the Respondents and their counsel is to the effect that they believed the item was collectible up to the last minute based on certain representations made by the account to the firm and to its counsel and from other representations received from certain banking institutions in this connection. In that connection, they admit, however, that the account did present a degree of being unsecured but contend it had an intrinsic value all during the period under question although it later was liquidated at a tremendous loss to the firm. We do not believe, however, under the circumstances present in this matter that this constitutes clear and convincing proof of the item's value, particularly in terms of readily reducing that asset to a liquid condition, therefore, the Member, when executing and submitting both the Forms "Q" as we found in the above Cause of Complaint, and the firm's Forms "M" in this, the last Cause of Complaint for the period alleged knew or should have known the item under question was not an admissible asset, therefore it is our opinion that such filings were false and misleading.

## Exhibit C.

Accordingly, we find that such acts, practices and conduct constitute separate and distinct violations of Sections 1 and 21(a) of Article III of the Rules of Fair Practice by the Respondent Member, Dorsey & Company, Inc.; and George P. Dorsey and Robert J. Vedros, the individuals responsible for the acts of the Respondent Member, each separately, as alleged in the third Cause of Complaint. We further find such conduct to be inconsistent with just and equitable principles of trade. We are convinced, however, from our review of the record that it will not support a finding of violation of Section 18 of the cited Rules, as alleged. Accordingly, that allegation is dismissed.

P E N A L T Y

Based on the foregoing, it is the Decision of this Committee that the following penalties be imposed:

- 1) The Respondent Member, Dorsey & Company, Inc., be censured and suspended from membership in this Association for a period of five (5) business days, commencing on a date to be set by the Executive Office of the Association;
- 2) The Respondents, George P. Dorsey and Robert J. Vedros, each separately, be censured and suspended from association with any Member of the Association in any capacity for a period of five (5) business days, commencing on a date to be set by the Executive Office of the Association and that the time period of suspension for all Respondents is to be concurrent on the date so set by that office; and
- 3) The Respondent Member, Dorsey & Company, Inc., and Respondents George P. Dorsey and Robert J. Vedros be assessed, jointly and severally, the costs of the proceedings in this matter, in the amount of \$924.36.

DISTRJCT BUSINESS CONDUCT COMMITTEE  
FOR DISTRICT NO. 5

By Edward Roddy  
Edward Roddy - Chairman

## STATEMENT OF COSTS:

Transcripts.....	\$870.30
Printing Decision...	54.06
	<u>\$924.36</u>

## Exhibit C.

Complaint No. N-217DORSLEY & COMPANY, INC.Exhibit "A"- Page 1 of 2.

Analysis of Form 17A-10 for the Calendar Year 1972  
detailing only corrected entries

<u>Description</u>	<u>Form 17A-10</u> <u>Original Filing</u>	<u>Form 17A-10</u> <u>Amended Filing</u>
<b>Introduction</b>		
Page 4 - Sources of Gross Income		
15K Other Income	\$   -0-	\$ 15,155.00
15M Interest/Dividends	49,412.00	51,902.00
15 Sum	Not Indicated	281,523.00
16d. OTC Agency	58,380.00	51,598.00
16c. OTC Principal	262,204.00	267,565.00
Sum	584,462.00	319,163.00
Page 5 - 17. Income from 16. above	584,462.00	319,163.00
20. Gross Securities		
Income	487,610.00	513,788.00
26. Total Number of Registered Personnel		
Registered Representatives	2	3
Principals	3	2
Total	5	5

Part II

## Statement AA

## Page 1 - Income

2(a)(1) Commission Received	\$ 58,380.00	\$ 51,598.00
(2) Commission Paid	-	60,000.00
(3) Balance	58,380.00	(8,402.00)
2K. Subtotal	58,380.00	(8,402.00)

## Page 2 - 4 Gain or Loss

(a) Exempt	157,568.00	127,568.00
(c) Other Non-Exempt	319,102.00	267,565.00
(d) Subtotal	476,679.00	395,133.00

## Page 3 -

9(a) Dividends/Interest	49,412.00	51,902.00
(e) Subtotal	49,412.00	Not indicated
10 Other Income	Not Indicated	15,155.00
11 Total Income	584,462.00	453,788.00

## Exhibit C.

ersley & C. my, Inc.  
Analysis of Form 17A-10

Complaint No. N-21  
Exhibit "A"

Page 2 of 2.

Form 17A-10  
Original Filing

Form 17A-10  
Amended Filing

Description

## Page 4 - Expenses

	<u>Form 17A-10</u>	<u>Original Filing</u>	<u>Form 17A-10</u>	<u>Amended Filing</u>
13. Employees Compensation				
(a) Executives	\$ 25,000.00		\$ 55,000.00	
(b) Registered Representatives	44,690.00		43,134.00	
(c) All Other	40,777.00		60,067.00	
(d) Subtotal	110,467.00		158,201.00	
16. Occupancy Expense	Not Indicated		6,456.00	
19. Interest Expense	65,837.00		108,814.00	
20. Other Expenses	163,773.00		279,247.00	
21. Total Expenses	373,177.00		585,820.00	
22. Operating Income (Loss)				
before Income Tax	211,283.00		(132,032.00)	
23. Provision for Fed. Income Tax	50,000.00		52,500.00	
24. Operating income (loss)	161,283.00		(184,532.00)	
26. a. Total operating income (loss)	161,283.00		(184,532.00)	

## Statement BB

## Capital Funds

## Page 7 (Note: Presented in detail)

1. Balance at beginning of year	\$ 966,209.00	\$ 966,209.00
2. Operating income (loss)	161,283.00	(184,532.00)
6. Increase (decrease) in value of exchange membership	(11,000.00)	(11,000.00)
12. Balance at end of year	<u>770,677.00</u>	<u>770,677.00</u>
(Note: totals of above figures:	\$1,116,490.00	\$ 770,677.00)

## Exhibit C.

Complaint No. N-217

DORSEY &amp; COMPANY, INC.

Amended Exhibit "B"

Comparison of Form Q  
To Trial Balances and Net Capital Computations  
For Period Ending February 1973

Page 1 of 2.

<u>Selected Items</u>		<u>Form Q Original Filing</u>	<u>Form Q Amended Filing</u>	<u>Per Trial Balance &amp; Staff Computation</u>	<u>Differences</u>
Cash	(1a)	47,181	\$ 47,181	\$ 47,181	
Escrowed Reserve	(1b) (1c)	55,017 72,646	- 72,646	- 72,646	1
Receivables from Customers	(3a)	1,402,726	1,602,726	1,492,673	2
INVENTORY					
Non-Exempts	(4 a.1.)	801,771	811,971	523,574 (Stocks)	
Exempts	(4 a.2.)	572,855	572,855	861,250 (Bonds)	
[Total Inventory]		(1,374,626)	(1,384,826)	(1,384,824)]	
Totals	(7)	3,403,703	3,558,886	3,448,832	
Unsecured Cust. Rec.	(8)	200,000	-	110,054	
Unsecured Loans	(15)	21,878	21,800	21,880	
Deposits & Prepaid Items	(16)	52,682	55,679	107,870	
Other Non-Allowable Assets	(18)	-	-	309	
Total Non-Allowable Assets	(19)	315,631	118,360	295,913	
Total Assets	(20)	3,719,064	3,677,246	3,744,746	
Taxes Payable	(25)	50,000	-	-	
Expenses Payable	(27)	38,079	38,082	38,082	
Total Liabilities in A.I.	(29)	2,060,922	2,010,925	2,010,925	
Total Liabilities	(36)	2,968,076	2,918,079	2,918,079	
Capital Stock	(37)	100,000	100,000	100,000	
Earned Surplus	(39)	515,217	515,217	515,218	
Realized Profit (Loss)	(40a)	155,346	155,346	187,945	
Unrealized Profit (Loss)	(40b)	(87,813)	(87,813)	(44,736)	
Reserve Account	(41)	68,238	68,238	68,238	
Total Capital	(42)	950,988	750,988	826,666	
Total Liabilities & Cap.	(43)	3,719,064	3,669,067	3,744,746	
Additional Entry to Balance			8,179		
			3,677,240		

<sup>1</sup> Original Form "Q" included deposits as escrowed cash.

<sup>2</sup> Firm deducted \$200M customer receivables as cushion in original

<sup>3</sup> Form "Q", then included all as secured in amended.

<sup>4</sup> Original Form "Q" - Prepaid Taxes - \$52,682

Amended Form "Q" - Deposits, Prepaid Taxes, Difference A/C - \$55,678

Trial Balance - All Prepaid Items, Deposits - \$107,870

<sup>5</sup> Original Form "Q" included Prepaid Taxes as Liability

## Exhibit C.

COMPANY INC.

Complaint No. N-217  
 Amer. of Exhibit "B" - Page 2  
 of 2.

<u>Selected Items</u>		<u>Form Q Original Filing</u>	<u>Form Q Amended Filing</u>	<u>Trial Balance &amp; Staff Computation</u>	<u>Difference</u>
Total Assets	(44a)	\$ 3,719,064	\$ 3,677,246	\$ 3,744,746	
Less Total Liabilities	(44b)	2,908,076	2,918,079	2,918,079	
Net Worth	(44c)	750,988	759,167	826,667	
Less Non-Allowable Assets	(44d)	315,361	118,360	295,913	
Current Capital	(44e)	435,627	640,807	530,754	
Haircuts	(44f)	199,652	199,725	199,725	
Fail Haircuts	(44g)	-	-		
Net Capital	(44h)	235,975	441,082	331,029	
Aggregate Indebtedness	(45)	2,000,922	2,010,925	2,010,925	
Net Capital Ratio	(46)	8.73	8.73	6.07	

## Exhibit C.

Complaint No. N-217  
Amended Exhibit "C"

DORSEY & COMPANY, INC.

Comparison of Form Q to Trial Balance and Net Capital Computation  
For Period Ending May 1973

<u>Selected Items</u>	<u>Form Q</u>	<u>Trial Balance &amp; Staff Computation</u>	
Cash (1a)	\$ 97,750	\$ 69,688	{ Firm failed to note ( Reserve Account in Form
Cash (1c)	-0-	28,063	(
Customer Receivables (3a)	892,141	684,320	In Form "Q", firm failed to deduct unsecured amount in Customer a/c
Total (7)	2,603,820	2,396,001	See (3a) above
Customer Receivables (Unsecured) (8)	-0-	207,821	See (3a) above
Unsecured Loans Advances (15)	25,648	25,481	
Deposits (16)	-0-	62,068	
Other Non-Allowables (18)	144,567	83,200	
Total Non-Allowables (19)	215,423	434,779	
Total Assets (20)	2,819,243	2,830,780	
Securities Short (33)	48,871	47,500	
Total Liabilities (36)	2,107,787	2,106,419	
Profit or Loss (40a Realized)	192,000	193,330	
Profit or Loss (40b Unrealized)	(164,000)	(152,432)	
Total Capitol (42)	711,456	724,362	
Total Capital & Liabilities (43)	2,819,243	2,830,780	
Net Capital (44)			
Total Assets (44a)	2,819,243	2,830,780	
Less Liabilities (44b)	2,107,787	2,106,419	
Net Worth (44c)	711,456	724,361	
Less Non-Allowables (44d)	215,423	434,779	
Current Capital (44e)	496,033	289,582	
Less Haircuts (44f)	153,525	153,525	
Net Capital (44g)	342,508	136,057	
Aggregate Indebtedness (45)	1,416,716	1,416,716	
Net Capital Ratio (46)	4.11	10.4	

## Exhibit C.

Complaint No. N-217

Dorsey & Company, Inc.Amended Exhibit "D"Analysis of Form MCovering only items with Corrections

<u>Item</u>	<u>Form M Initial Filing</u>	<u>Form M Amended Filing</u>	(000) <u>T/Bal. &amp; S Computation</u>
January 1973			
Current Capital	666	707	707
Unrealized Profit (Loss)	25	20	20
Net Capital	533	549	549
February 1973			
Cash	49	47	47
Inventory	1,360	1,384	1,384
Current Capital	705	640	530
Unrealized Profit (Loss)	(72)	(45)	(44)
Net Capital	305	441	330
March 1973			
Inventory	1,505	1,604	1,514
Current Capital	735	596	481
Realized Profit (Loss)	1	(56)	(26)
Unrealized Profit (Loss)	(20)	(25)	(14)
Net Capital	335	414	307
April 1973			
Cash	89	92	91
Current Capital	745	512	344
Unrealized Profit (Loss)	(105)	(111)	(125)
Net Capital	318	305	138
May 1973			
Cash	66	-	69
Fails to Receive	898	-	1048
Current Capital	487	-	289
Realized Profit (Loss)	24	-	19
Unrealized Profit (Loss)	(151)	-	(151)
Net Capital	358	-	135

63a

Exhibit C.

June 1973

Fails to Deliver	910	-	914
Fails to Receive	991	-	1272
Inventory Short	82	-	80
Current Capital	459	-	245
Realized Profit (Loss)	(121)	-	(118)
Unrealized Profit (Loss)	(69)	-	(65)
Net Capital	341	-	143

## Trial Transcript.

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2 MR. SADOWSKY: No further questions.

3 THE COURT: All right. The witness may be  
4 excused.

5 (Witness excused)

6 MR. SADOWSKY: Your Honor, I call at this time  
7 Mr. Robert Vedros.8 R O B E R T                    J.                    V E D R O S ,                    called  
9                                 as a witness by the plaintiff, being first duly  
10                                 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SADOWSKY:

13 Q        Mr. Vedros, by whom are you employed?

14 A        Dorsey and Company, Incorporated.

15 Q        Is that the plaintiff in this action?

16 A        Yes, sir

17 Q        How long have you been employed by that  
18 company?

19 A        Twelve, thirteen years.

20 Q        And in what capacity are you presently employed?

21 A        Secretary-treasurer.

22 Q        And what position did you hold in 1972?

23 A        The same position.

24 Q        And what are your principal duties at the  
25 company?

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2 A Principal duties are trading of stock, executing  
3 of orders, and general office routine, supervising of the  
4 office.

5 Q Do you know Robert Tomarkin and Lloyd Whitkind?

6 A Yes.

7 Q Were they customers of the plaintiff?

8 A Yes.

9 Q Can you tell me when they first became customers  
10 of the plaintiff?

11 A Late March of '72 or early April '72, approximately.

12 Q Can you tell me the names in which they traded  
13 with you?

14 A Tomarkin traded under the name of Williams Investors  
15 Company, and Whitkind traded under the name of Whitkind  
16 Realty Company.

17 Q Did they buy and sell with you?

18 A No, sir; they just bought.

19 Q They just bought but did not execute any sales?

20 A No sales.

21 Q All right.

22 Prior to the transaction which is the subject  
23 of the lawsuit, how was the method of delivery and payment --  
24 what was the method of delivery and payment?

25 A Delivery of all purchases made by both accounts

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Vedros-direct

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2 was delivery versus payment.

3 Q What does that mean, "delivery versus payment"?

4 A The stocks which were purchased are attached  
5 to a draft, deposited with our bank -- in this case, the  
6 Hibernia National Bank -- and shipped to a bank specified  
7 by the customer for payment upon receipt by the bank to  
8 whom it is sent.9 Q And prior to this transaction, how were these  
10 delivery versus payment transactions consummated?11 A The consummation of the purchases previous to  
12 this transaction were the delivery of the stock, draft  
13 attached, to the Hibernia National Bank, originally with  
14 the collection department, and then forwarded to a bank  
15 in Montreal, to be presented to a clearing agent by the  
16 name of Massey Lavoie who then paid for the drafts.17 Later the drafts that were sent up to Montreal  
18 were sent through the foreign or international department  
19 of the Hibernia National Bank.20 Q But, in each case, whether it was the collection  
21 department of the Hibernia Bank or the foreign department,  
22 the documents were delivered to Canada; is that right?

23 A Yes, sir.

24 Q For clearance?

25 A Yes, sir.

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2 Q And did you receive payment each time?

3 A Yes, sir.

4 Q And how many such transactions were involved?

5 A Approximately six or seven.

6 Q Were they large transactions?

7 A Yes, sir. They always bought large amounts  
8 of shares, and the dollar amounts went as high as the six-  
9 figure area.10 Q The value of the securities sold was in the six  
11 figures; is that what you are saying?12 A Securities purchased were in the six-figure  
13 area in market value.14 Q In connection with the transaction which is  
15 the subject of this action, did you receive different  
16 instructions?

17 A Yes, sir, I did.

18 Q From whom did you receive those instructions?

19 A From Robert Tomarkin.

20 Q What did he tell you?

21 A He told me to draft the securities to the  
22 Bank of Haiti, Republic National Bank of Haiti in Port au  
23 Prince.

24 Q To the account of any --

25 A To the account of Paul Supart &amp; Company.

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2 Q Did you purchase the stocks which are mentioned  
3 on the face of the drafts marked as Exhibit 1?

4 A Yes, sir.

5 Q And did you prepare the drafts which are part  
6 of Exhibit 1?

7 A The drafts were prepared by the bank office  
8 employees, but I signed the drafts to be presented to the  
9 Hibernia National Bank.

10 Q And did you send down Exhibit 1 together with the  
11 stock certificates to the Hibernia National Bank?

12 A Yes, sir.

13 Q Was that on or about September 25th?

14 A Yes, sir.

15 Q When you learned that the stocks were apparently  
16 missing, what did you do?

17 MR. McALLISTER: Objection, your Honor.

18 THE COURT: I will sustain it as to form.

19 Q Did you receive any communication from the Bank  
20 with respect to the stock?

21 A The Bank told me that they could not locate the  
22 stock in the bank in Haiti, and we had to assume that they  
23 were lost, and ordered --

24 Q Not what you assumed; what did you do?

25 A Well, when we found out that the Hibernia Bank could

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2 not locate the securities in the Haitian bank, we --  
3 I personally telephoned the transfer agents of the stock  
4 that were involved and told them that we believe the  
5 securities were lost and we wanted stock transfers  
6 placed against them.

7 THE COURT: When did you do that?

8 THE WITNESS: Pardon me, sir?

9 THE COURT: When did that occur?

10 THE WITNESS: Immediately after the cable  
11 from the Hibernia -- that the Hibernia National Bank  
12 received, that stated by the Bank in Haiti that the  
13 drafts were apparently not received.

14 THE COURT: Can you fix the date of that?

15 THE WITNESS: By mid-October, sir.

16 Q 1972?

17 A 1972, yes, sir.

18 Q Did you take any other steps, Mr. Vedros?

19 A The Banks informed me that I had to submit  
20 written letters of stock transfer, outlining the certificate  
21 numbers and the names they were registered in, and that they  
22 would send me the necessary papers to obtain duplicate  
23 certificates.

24 THE COURT: Which Bank informed you of that?

25 THE WITNESS: The transfer banks for the

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2 different stocks involved, your Honor.

3 MR. McALLISTER: "Transfer agent" would be a  
4 better expression.

5 THE WITNESS: Transfer agent.

6 Q And did you subsequently receive mail-  
7 loss affidavits from these transfer agents?8 A Yes, sir. I received from the transfer agents  
9 an affidavit form that required an affidavit of non-  
10 receipt by the addressee, which I gave to Mr. Robin  
11 of the Hibernia National Bank to be forwarded to the  
12 Bank in Haiti to be filled out.13 MR. McALLISTER: Could we fix a time for that,  
14 your Honor?

15 MR. SADOWSKY: Well, let me --

16 Q Can you remember the date? Perhaps I can help  
17 you refresh your recollection.

18 A No.

19 (Exhibit No. 8 was handed to the witness.)

20 A Yes, it would be about the first part of  
21 November, 1972.22 Q I showed you Exhibit 8 and that refreshes your  
23 recollection that it was in the first part of November,  
24 1972?

25 A Yes, sir.

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2 Q Now, did you hear from your customers during  
3 this period in October and November 1972?

4 A Yes, sir. I received several telephone calls  
5 from Mr. Tomarkin.

6 Q What did he say to you and what did you say to  
7 him?

8 A He was calling, inquiring about the shipment of  
9 the securities, whether it had been done, and if I had any  
10 knowledge that the draft had arrived and been paid,  
11 because he was looking for his stocks.

12 Q Did he give you any instructions with respect  
13 to the securities?

14 MR. McALLISTER: Just for the clarity of the  
15 record, your Honor, could we identify who in Dorsey and  
16 Company received the conversations?

17 THE WITNESS: I received them myself.

18 Q Did he give you any instructions with respect  
19 to the securities?

20 A Once I told him that the draft could not be  
21 located, he asked me to sell the securities.

22 Q Were you able to sell them?

23 A I was prohibited by the securities rules from  
24 selling the securities because I did not know the specific  
25 location. At that time there was a rule that you had to

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2 be assured of physical delivery of securities before entering  
3 sale orders.

4 Q When were the securities returned to you?

5 A December 22, 1972.

6 Q Did you take any steps to deliver them against  
7 payment to Mr. Tomarkin and Mr. Whitkind or their companies?

8 A We tried to make delivery to them, yes, sir.

9 Q Did they refuse to accept delivery?

10 A Yes, sir.

11 Q Did they make payment?

12 A No, sir.

13 Q Did there come a time when you sold the securities?

14 A Yes, sir.

15 Q What did you receive on the sale of the securities?

16 A Approximately two hundred fifty-six thousand  
17 dollars.

18 THE COURT: Can't we get some dates here?

19 MR. SADOWSKY: On the sale of the securities, yes.

20 Q When did you sell the securities, do you know?

21 A In April '73 -- excuse me, May of '73.

22 MR. SADOWSKY: May we have these documents marked  
23 for identification? They are Dorsey and Company bookkeeping  
24 records.

25 (Plaintiff's Exhibit No. 13 was marked for .

1 jkmch Vedros-direct 34  
2 identification.)

3 Q Mr. Vedros, I show you Exhibit 13 for identifi-  
4 cation and ask if it refreshes your recollection as to when  
5 you sold the securities in question.

6 MR. McALLISTER: Objection, your Honor.

7 THE COURT: It's allowed.

8 A Yes, sir, these were the ultimate sales of the  
9 securities.

10 Q And does it refresh your recollection as to when  
11 they were sold?

12 A Yes, sir, May of 1973.

13 Q And you say that you realized \$256,000 on the sale?

14 A Approximately.

15 THE COURT: How much had you paid for them,  
16 purchased them at?

17 THE WITNESS: \$628,000, including commission.

18 Q That is the total amount of the drafts?

19 A Yes, sir.

20 Q Does the total amount of the drafts indicate  
21 the cost of the securities plus your commission?

22 A Yes, sir.

23 Q Did you incur any other expenses in connection  
24 with the transaction?

25 A Yes, sir, there was approximately \$1,500 worth

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2 of charges by the Hibernia National Bank.

3 Q Do you have any breakdown? Is there anybody  
4 that can refresh your recollection as to what those charges  
5 were?

6 A There were commission charges for about \$1,250.

7 Q Can we have it exactly?

8 THE COURT: Commission charges for what? Whom?  
9 I don't follow that.

10 THE WITNESS: These were commission charges by  
11 the Hibernia National Bank to send the drafts down to  
12 Haiti.

13 THE COURT: Wasn't that included in the \$628,000?

14 THE WITNESS: No, sir. This is over and above.

15 Q And what other charges did you have?

16 A We had cable charges.

17 Q Of how much?

18 A About \$175. We had an insurance premium charge  
19 which covered mail going out of the country by the Hibernia  
20 Bank in the amount of \$170. And there were some telephone  
21 calls, I think, amounting to about \$50.

22 MR. McALLISTER: I move to strike the last  
23 part; speculative. He said, "I think." Guessing.

24 A We were actually charged by the Hibernia Bank  
25 \$49.50 for long-distance calls from New Orleans to Haiti,

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2 plus we had an additional call which I myself made, in  
3 the amount of \$25 from New Orleans to Haiti, that I made  
4 the telephone call personally.

5 Q Can you tell us about that telephone call and when  
6 it took place?

7 A It took place about the middle of October 1972,  
8 and I called the Bank in Haiti, trying to reach the  
9 collection department where the draft would have been  
10 presented for payment. And I spoke to a Mr. George Colbert --

11 MR. McALLISTER: Spell that please.

12 THE WITNESS: C-o-l-b-e-r-t.

13 Q Will you tell us what that conversation was?

14 A I attempted to inquire from Mr. Colbert if he  
15 had received the draft sent by the Hibernia National Bank.  
16 I stated the amount of the draft, and he spoke broken  
17 English, and I spoke no French, so we had a little bit of  
18 a difficulty in communicating, but he did relate to me that  
19 he knew nothing about it, and he didn't see any draft  
20 from the Hibernia or anything.

21 Q Did you have any other conversation with the Bank  
22 in Haiti, or were you party to any other conversation with  
23 the Bank of Haiti?

24 A I was a party to a conversation that Mr. Robin  
25 of the Hibernia National Bank placed to the Bank in Haiti.

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2 Q When was that?

3 A This was about the third week of November,  
4 1972, and he spoke to a Mr. Bonnefil.

5 Q Third week of when?

6 A Of November, 1972.

7 He spoke to a Mr. Bonnefil. We were attempting  
8 to get the affidavits of nonreceipt back from the Bank  
9 in Haiti, so that we could forward them to the transfer  
10 agents and have duplicates of certificates issued.11 Mr. Bonnefil related to Mr. Robin that he had not  
12 seen the original affidavits of nonreceipt which Mr.  
13 Robin had sent down previous to this conversation, and  
14 Mr. Robin told him that he was going to send down a second  
15 set of these affidavits, and that it was very urgent  
16 and imperative that the Bank fill out the affidavit of non-  
17 receipt and return it to him as soon as possible, so that  
18 we could obtain duplicate certificates.19 Q Did the name Supart & Company come up at this  
20 conversation?

21 A No, sir, not at all.

22 Q Did anyone, prior to the commencement of this  
23 action, relate to you that there was no such company as  
24 Paul Supart & Company?

25 A No, sir.

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2 MR. McALLISTER: I have no further questions.

3 THE COURT: Suppose we take our mid-morning  
4 recess at this point.

5 (Recess)

6 CROSS-EXAMINATION

7 BY MR. McALLISTER:

8 Q Mr. Vedros, how old are you?

9 A Thirty four.

10 Q You have been in this stock brokerage business  
11 ten or twelve years?

12 A Twelve, thirteen years.

13 Q All with Dorsey and Company?

14 A Yes, sir.

15 Q And are you a registered principal at the NASD?

16 A Yes, sir.

17 Q Is Dorsey and Company registered with the SEC?

18 A Yes, sir.

19 Q And it is also registered with the NASD? It is  
20 a member firm of the NASD?

21 A Yes.

22 Q What is your educational background?

23 A High school graduate, 2-1/2 years of business  
24 administration, LSU, Louisiana State University.

25 Q No degree, though?

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2 A No, sir.

3 Q What is your position with Dorsey and Company?

4 A Secretary-treasurer.

5 Q And you are registered as a registered principal,  
6 are you not, with the NASD?

7 A Yes. That is what I just stated.

8 Q Are there other registered principals of Dorsey  
9 and Company?

10 A George P. Dorsey.

11 Q Do you own any stock in it?

12 A No, sir.

13 Q You are strictly a salaried employee?

14 A Salaried and commission.

15 Q Based on what? What are the commissions based on?

16 A The amount of commissions generated by sales  
17 and purchases of stocks and bonds.

18 Q In other words --

19 THE COURT: Please try to keep your voice up.

20 THE WITNESS: Excuse me, your Honor.

21 Q In other words, you receive income from sales from  
22 clients of yours for whom you transact business; is that  
23 correct?

24 A Yes, sir.

25 Q And approximately what percentage of the commissions

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2 is yours in that?

3 A 50 percent.

4 Q 50 percent?

5 A Yes, sir.

6 Q Better than most.

7 Are you familiar with --

8 MR. SADOWSKY: I ask the remark be stricken,  
9 your Honor.

10 THE COURT: I didn't hear it.

11 Q As a registered principal in the NASD, you  
12 are familiar with the Rules of Fair Practice, are you not?

13 A Yes, sir.

14 Q And you are familiar with Section I, Article (3),  
15 Rules of Fair Practice, dealing with business conduct of  
16 members?

17 A Yes, sir.

18 Q And Section II (1) regarding books and records?

19 A Yes, sir.

20 Q Are you familiar with Rule 15b-10(4) of the  
21 Securities and Exchange Commission, dealing with solicitation  
22 and suitability requirements?

23 A Yes, sir.

24 Q And, in fact, Rule 15b-10(4) deals with the  
25 opening of accounts, does it not?

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2 A Yes, sir.

3 Q And supervision of accounts?

4 A Yes, sir.

5 Q Would it be fair to say that Rule 15b-10 and  
6 Section I, Article (3) of the NASD require you to learn  
7 the essential facts regarding a customer when you open  
8 an account for a customer?

9 MR. SADOWSKY: Objection, your Honor.

10 THE COURT: I will allow him to answer it.

11 THE WITNESS: Would you please repeat the  
12 question?

13 (Record read)

14 A Yes.

15 Q A shorthand way of saying it is you must learn  
16 to know your customer; is that right?17 MR. SADOWSKY: Objection to the characterization,  
18 your Honor.19 THE COURT: What difference does it make? I am  
20 sitting without a jury.

21 Q You may answer.

22 A Yes, sir.

23 Q Mr. Vedros, if I recall correctly, the Williams  
24 Investors and Whitkind Realty accounts were opened in  
25 April 1972?

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2 A Approximately.

3 Q Can you tell us the circumstances of the opening  
4 of those two accounts?5 A Yes, sir. We received a -- Dorsey and Company  
6 received a telephone call from Mr. Lloyd Whitkind,  
7 and Mr. Dorsey was the person that he was calling, and  
8 he wanted to open an account and place some orders.9 He told Mr. Dorsey that he was referred to our  
10 firm by a mutual friend of his and Mr. Dorsey's here  
11 at Bache & Company in New York, and Mr. Dorsey --

12 Q Do you know the name of that mutual friend?

13 A No, sir, I don't know.

14 At that point, Mr. Dorsey told me to take the  
15 orders from Mr. Whitkind and open the account, which I did.16 Q Were they in separate conversations, the  
17 instructions by Mr. Dorsey to open the account and to take  
18 the orders?19 A It was while he was on the telephone with Mr.  
20 Whitkind.

21 Q Were you on an extension?

22 A No, sir.

23 Q You don't know who the fellow at Bache is that  
24 was the mutual friend?

25 A No, sir.

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2 Q Can you fix the date when this occurred?

3 A Approximately the beginning of April, 1972.

4 I can't fix it specifically, no, sir.

5 Q And this is Mr. Williams?

6 A No, sir; Mr. Whitkind.

7 Q Mr. Whitkind, I'm sorry.

8 What about Mr. Tomarkin, when did he open his  
9 account?10 A Several days later, Mr. Whitkind called me  
11 and said that he had a friend of his that had been doing  
12 business much along the same lines as he had done himself,  
13 and that he'd like to open an account and start doing  
14 business with us.

15 Q And he called you directly?

16 A Mr. Whitkind called me, yes, sir.

17 Q I thought Mr. Whitkind was the first one.

18 A Mr. Whitkind called me and told me that he had  
19 a friend of his that wanted to open an account, Mr.  
20 Tomarkin, and I got on the telephone and spoke with  
21 Mr. Tomarkin then.

22 This was the same conversation.

23 Q The same conversation?

24 A Yes, sir.

25 Q You believed Mr. Tomarkin and Mr. Whitkind were in

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2 the same office, or something like that? This wasn't in  
3 your presence; this was a telephone conversation?

4 A Telephone.

5 Q Do you have new account approval forms at Dorsey  
6 and Company?

7 A We have new account cards.

8 Q New account cards.

9 And do you have new account cards for either  
10 of these accounts?

11 A No, sir.

12 Q Did you ask either Mr. Whitkind or Mr. Tomarkin  
13 for bank references?

14 A We sent them new account cards to be filled out  
15 and returned.

16 MR. McALLISTER: I move to strike the answer,  
17 your Honor.

18 THE COURT: I will let it stand. What difference  
19 does it make? You may pursue it further, if you want.

20 Q Were you ever given a bank reference by either  
21 of these gentlemen?

22 A The Bank of Montreal.

23 Q Did you speak to the Bank of Montreal?

24 A No, sir.

25 Q Did you ever receive the new account cards signed

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2 by either Whitkind or Tomarkin?

3 A No.

4 Q Did you ask what the investment objective of  
5 these gentlemen was in April 1972?

6 A They informed me that it was just short-term  
7 trading for profits.

8 Q And did you ask them what assets they had,  
9 or any other financial questions along those lines in  
10 that April 1972 conversation?

11 A No, sir, I did not.

12 I was directed by Mr. Dorsey to take this  
13 account and to execute the orders.

14 Q That is Mr. Whitkind's account?

15 A I consulted him on Mr. Tomarkin, also.

16 Q Prior to September 25, 1972, had you met either  
17 of these gentlemen?

18 A No, sir.

19 Q All your communications were by telephone with  
20 these two gentlemen?

21 A Yes.

22 Q In what names were these accounts opened by  
23 Tomarkin and Whitkind?

24 A Whitkind opened an account in the name of  
25 Whitkind Realty; Tomarkin opened an account in the name of

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2 Williams Investors.

3 Q Are these corporations?

4 A They told me they were solely-owned private  
5 corporations by each of themselves, and they were 100-percent  
6 stockholders of both.

7 Q Did they identify any other officers of either  
8 entity?

9 A No, sir.

10 Q Members of the board of directors?

11 A No, sir.

12 Q Did you ask for a corporate resolution?

13 A Yes, sir.

14 Q Did they give you one?

15 A They told me they didn't have to have one  
16 because it was a private corporation which they used solely  
17 for tax purposes.

18 Q And that satisfied you?

19 A Yes, sir.

20 Q The fellow at Bache, did he know Tomarkin or did  
21 he just know Whitkind?

22 A To the best of my knowledge, Mr. Whitkind told  
23 Mr. Dorsey that he had a mutual friend at Bache & Company.

24 Q But it was not Tomarkin's mutual friend?

25 A I don't know.

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2 Q When did you have your first transaction in  
3 either of these accounts?

4 A Early April '72.

5 Q Do you know the nature of the transaction?

6 A They were purchases of large blocks of stock.

7 Q Do you know the approximate amount?

8 A Not right offhand.

9 Q Do you know what securities were involved?

10 A I can recall several of the securities that were  
11 purchased by the two accounts.

12 Q I'm talking about the initial series of trans-  
13 actions, or the initial transaction.

14 A I can't recall it right offhand, no, sir.

15 Q Between -- well, just to set a chronology here,  
16 the first purchase in connection with the transaction in suit  
17 took place on or about August 15, 1972; is that correct?

18 A Approximately.

19 Q Okay.

20 Now, prior to August 15, 1972, and after April 1,  
21 1972, approximately how many different transactions did  
22 you have for these two entities, Whitkind Realty and  
23 Williams Investors?

24 A As I stated earlier, I believe it's approximately  
25 six or seven transactions.

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2 Q Separate transactions?

3 A Yes, sir.

4 Q What was the nature of each of these transactions?

5 A What do you mean by the nature of the transactions?

6 Q Well, were they purchased on margin, were they  
7 sales?

8 A As I stated, they only purchased stocks through  
9 me, not on margin, and were all listed securities, either  
10 the New York Stock Exchange or the American Stock Exchange.

11 Q That is for the transactions prior to August 15th?

12 A Yes, sir.

13 Q Were they all delivery against payment?

14 A Yes, sir.

15 Q And were they all deliveries through the Bank of  
16 Montreal?

17 A Yes, sir.

18 Q And were they all for the account of Whitkind  
19 Realty or Williams Investors to be collected against -- do  
20 you understand that? Maybe you could --

21 MR. MCALLISTER: Strike that.

22 Q Why don't you describe for us, step-by-step,  
23 the procedure to be followed by Dorsey and Company in these  
24 purchases and delivery against payment?

25 A As I stated, when the stocks were bought, there

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2 was delivery versus payment. When the stocks were  
3 received, the drafts for the amount of the purchase were  
4 typed up, attached to the certificates given to the  
5 Hibernia National Bank to be shipped to the Bank of  
6 Montreal, for the account of Massey Lavoie, for Whitkind  
7 and Tomarkin, and to be collected.

8 Q Their corporate entities; right?

9 A Yes.

10 Q When you say for the account . Massey Lavoie  
11 for Whitkind Realty and Williams Investors, does that  
12 mean that Williams Investors and Whitkind Realty had accounts  
13 at Massey Lavoie?

14 A Yes, sir.

15 Q They had securities accounts there?

16 A Yes, sir.

17 Q And Massey Lavoie was a broker-dealer?

18 A Yes, sir.

19 Q A Canadian broker-dealer?

20 A Yes, sir.

21 Q Were there any problems with any of these  
22 transactions?

23 A No, sir.

24 Q You were never advised at any time -- by "you"  
25 I mean Dorsey and Company -- that the Bank or Montreal or

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2 Massey Lavoie were either of these fellows or their  
3 entities?

4 A Subsequent to the delivery of this transaction in  
5 question, the Massey Lavoie did not want to take any  
6 deliveries for Whitkind.

7 Q When did that occur?

8 A Immediately preceding the delivery of the  
9 securities to the Bank in Haiti.

10 Q That would be in September 1972?

11 A Yes, sir.

12 Q And I'm sorry, was it Massey Lavoie told you  
13 they wouldn't receive any more certificates for --

14 A Yes, sir.

15 Q -- for Whitkind?

16 A Yes, sir.

17 Q Did they tell you the reason why?

18 A No, sir.

19 Q Did you ask?

20 A No, sir.

21 Q Do you do business generally with Massey Lavoie?

22 A Only through these two accounts.

23 Q And you just accepted the bald statement that  
24 Massey Lavoie refused to do business with these people?

25 MR. SADOWSKY: Object to the question as to form.

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2 THE COURT: Leave out the "bald statement."

3 Sustained as to form.

4 Q And you merely accepted the statement by Massey  
5 Lavoie that they refused to do business with Whitkind;  
6 is that correct?

7 A Yes, sir.

8 Q Did you have any written communication with  
9 Massey Lavoie other than the normal commercial papers  
10 flowing back and forth?

11 A No, sir.

12 Q And you had approximately six or seven trans-  
13 actions between April 1, 1972 and August 15, 1972?

14 A Yes, sir.

15 Q And would you say there was -- that is a four-  
16 month period, four-and-a-half-month period -- and would  
17 you say the six or seven transactions were spread evenly out  
18 over that four-and-a-half-month period?

19 A I can't recall that.

20 Q Is it fair to say that they were spread out  
21 over four and a half months?

22 A I don't know if it's fair or not.

23 Q Were all of the transactions in the month of  
24 April 1972?

25 A No, sir.

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2 Q Were all of the transactions in June of 1972?

3 A No, sir.

4 Q Were all of the transactions in July of 1972?

5 A No, sir.

6 Q Well, based on those statements, would it be  
7 fair to say that the six or seven transactions were spread  
8 out over the four-and-a-half-month period?

9 A All the transactions were secured between  
10 April and August of 1972.

11 Q Okay.

12 Now, as in this case, were the transactions such  
13 that the purchase orders were given to you over a period  
14 of time, you collected the securities in on the various  
15 purchase orders, and shipped them in one package to the  
16 Bank of Montreal; is that how the six or seven transactions  
17 took place?

18 A Which six or seven transactions?

19 Q The ones we are talking about between April 1,  
20 1972 and August 15, 1972.

21 A No, sir.

22 Q Was it each of the transactions was merely one  
23 order, you received the certificates in and sent them up  
24 to the Bank of Montreal?

25 A The transactions between April '72 and August

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2 of '72 were one or two at a time, and when delivery was  
3 received the stocks were then drafted.

4 At some later date, additional purchase orders  
5 were entered and executed. When those securities came in,  
6 they were shipped up to the Bank of Montreal.

7 Q Okay.

8 Were they different securities, or were these  
9 transactions all in one security?

10 A They were different securities.

11 Q Approximately how many different securities?

12 A I would only be guessing. I don't know.

13 Q Now, getting into this transaction on or about  
14 August 15th -- and I will give you Plaintiff's Exhibit 1,  
15 if that will help refresh your recollection -- you started  
16 to receive telephone calls from either Whitkind or  
17 Tomarkin regarding the purchases in suit; is that correct?

18 A Yes, sir.

19 Q But the Plaintiff's Exhibit 1 does not give you the  
20 dates of the purchases, does it?

21 A No, sir.

22 MR. McALLISTER: At this time I will have to --  
23 Off the record, your Honor.

24 (Pause)

25 MR. McALLISTER: Your Honor, at this time I would

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2 like to have marked for identification Defendant's  
3 Exhibit A.

4 (Defendant's Exhibit A was marked for identifi-  
5 cation.)

6 Q Mr. Vedros, could you identify Defendant's  
7 Exhibit A for the record, please?

8 A This is part of a five-part confirmation form that  
9 we use in our office for confirming transactions, and this  
10 is what we call the cashier or delivery copy which is  
11 attached to the securities when they are delivered to the  
12 customer.

13 Q And does Defendant's Exhibit A identify the trades  
14 in suit except for, I believe, there is one trade missing?  
15 Is that correct?

16 MR. SADOWSKY: 500 shares of C & R Clothiers.

17 Q Is that correct?

18 A I don't understand your question.

19 Q Okay, I will rephrase it.

20 Except for 500 shares of C & R Clothiers, does  
21 Defendant's Exhibit A reflect the orders executed by  
22 Dorsey and Company on behalf of Whitkind and Tomarkin?

23 A Yes, sir.

24 Q And does it also reflect the dates on which  
25 those transactions were executed?

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2 A No, sir.

? Q Well --

4 A Oh, excuse me. Your exhibit, yes, sir.

5 Q Defendant's Exhibit A?

6 A Yes.

7 MR. McALLISTER: Your Honor, at this time I move  
8 the admission of Defendant's Exhibit A.

9                   MR. SADOWSKY: I have no question as to their  
10                  authenticity. I have a question as to the relevance to  
11                  any issue in this case and I object to them on that  
12                  ground, your Honor.

13 THE COURT: They may be received. They may have  
14 some relevance. I'm not sure at this point.

17 Q Looking at Defendant's Exhibit A, Mr. Vedros,  
18 the transaction dates run between August 15, 1972 and,  
19 apparently, September 11, 1972; is that correct?

20 A Yes, sir.

Q And each of these transactions are registered  
on your books and records separately, are they not?

23                  A            Yes, sir.

24 Q Mr. Vedors, you are familiar with Regulation T  
25 in your capacity as a registered principal, are you not?

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2 A Yes, sir.

3 Q And are you familiar with the term, "letter of  
4 free credit" or "free funds"?

5 A No, sir.

6 Q Have you ever read Regulation T?

7 A Yes.

8 Q I would like to draw your attention to  
9 Section 220.4c8, and ask you if you have ever read that  
10 paragraph --

11 MR. McALLISTER: And directing the witness'  
12 attention to it.

13 A Yes, I am familiar with this part of the rules.

14 Q And are you familiar with the memorandum of  
15 the Board of Governors immediately following the cite  
16 that I just gave you in the NASD Manual? And I am  
17 specifically referring to the paragraphs captioned "Frozen  
18 Accounts."

19 Are you familiar with that?

20 A Yes, sir.

21 Q And are you familiar with the statement, "In  
22 case of delivery to another broker-dealer, the delivering  
23 broker obtains from the receiving broker a written statement  
24 that the securities are being accepted for a special cash  
25 account of the customer in which there are already sufficient

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2 funds to make full cash payment for the securities so  
3 received"? You are familiar with that provision?

4 A No, sir.

5 Q You have never heard of that before?

6 A No, sir.

7 Q Did you ever obtain such a written statement  
8 from either Massey Lavoie or from Paul Supart & Company?

9 MR. SADOWSKY: Objection, your Honor.

10 THE COURT: I don't understand the Paul Supart  
11 part of the question.

12 MR. McALLISTER: I will withdraw that part.

13 THE COURT: Is he a broker here?

14 MR. McALLISTER: We don't know who they are.

15 THE COURT: I understand that. I don't see its  
16 relevancy.

17 MR. McALLISTER: I will withdraw the Paul Supart  
18 part.

19 Q Did you ever receive anything like that from  
20 Massey Lavoie, a written statement?

21 MR. SADOWSKY: Objection, your Honor.

22 THE COURT: What difference does that make  
23 with respect to those earlier transactions? You had better  
24 explain that theory to me, because there is a rather broad  
25 question here.

2 MR. McALLISTER: I understand that. These  
3 accounts should have been frozen, your Honor.

4 THE COURT: Which accounts are you talking about?

5 MR. McALLISTER: I'm talking about the accounts  
6 of the customers of Dorsey and Company. These trades,  
7 delivery against payment, without that letter of free  
8 credit.

9 THE COURT: You are talking about the transactions  
10 that took place with the Montreal concern; is that right?

11 MR. McALLISTER: That is correct. And they  
12 affect the transactions in suit as well, your Honor.

13 THE COURT: Why?

14 MR. McALLISTER: Because of Regulation T, your  
15 Honor. Regulation T requires that when you have a  
16 delivery-against-payment account and you have a transaction  
17 within ninety days in that account, delivery against  
18 payment, you must obtain that written statement from the  
19 other side or the receiving broker.

20 THE COURT: Who is the other side here?

21 MR. McALLISTER: Massey Lavoie in the first  
22 instance, your Honor, and then --

23 THE COURT: What has Massey Lavoie got to do  
24 with these transactions here?

25 MR. McALLISTER: These accounts should have been

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2 frozen, the Whitkind Realty and Williams Investors account  
3 should have been frozen.

4 THE COURT: I understand the Massey Lavoie  
5 accounts were all paid for, the drafts were accepted; is  
6 that correct?

7 MR. McALLISTER: That is correct, your Honor.

8 THE COURT: What does that have to do with this  
9 case?

10 MR. McALLISTER: Under Regulation T, your Honor,  
11 whether they were paid for or accepted is insufficient,  
12 you need a letter of free credit.

13 THE COURT: But those are not the securities  
14 involved in this case.

15 MR. McALLISTER: Your Honor, the whole account  
16 had to be frozen under Regulation T.

17 MR. SADOWSKY: Whose account?

18 MR. McALLISTER: The Whitkind Realty and  
19 Williams Investors.

20 MR. SADOWSKY: With our customer?

21 MR. McALLISTER: At Dorsey and Company.

22 MR. SADOWSKY: There was nothing in the account.

23 THE COURT: Go ahead. Put your questions if  
24 you think there is some relevance to it.

25 By the way, I don't have a copy of defendant's

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2 answer in this case. That was the responsibility of the  
3 plaintiff to submit marked pleadings.

4 MR. SADOWSKY: Yes, your Honor, I thought we had.

5 MR. McALLISTER: Your Honor, our fifth affirmative  
6 defense is contributory negligence.

7 THE COURT: Go ahead; put your questions.

8 Will you continue, please?

9 MR. McALLISTER: Yes, sir.

10 Q On August 15th, when you received your first  
11 telephone call with regard to the transactions in suit,  
12 who called you? Was it Tomarkin or Whitkind?

13 A I can't recall specifically.

14 Q Well, did you accept orders from ther Tomarkin  
15 or Whitkind for the other's account at any time?

16 A On one occasion.

17 Q Did you have a power of attorney for that in  
18 writing?

19 A No, sir. I accepted an order from Mr. Tomarkin  
20 for Mr. Whitkind, and subsequent to the receipt of the  
21 order I telephoned Mr. Whitkind to inform him of this,  
22 and he said that it was okay.

23 Mr. Tomarkin had told me that Mr. Whick'nd wanted  
24 to purchase such-and-such a stock. I later verified that  
25 with Mr. Whitkind.

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2            Q      Do you know a Roberto Tomarkia?

3            A      No, sir.

4                    MR. McALLISTER: Your Honor, at this time I  
5      would like to have an exemplified copy of documents from  
6      the New York County Court Clerk's office marked  
7      for identification as Defendant's Exhibit B.

8                    (Defendant's Exhibit B was marked for iden-  
9      tification.)

10                  MR. McALLISTER: Under Rule 44(a) I move  
11      the admission of the document, your Honor.

12                  MR. SADOWSKY: Your Honor, I'm familiar with  
13      these documents. I object to them on the grounds of  
14      relevancy.

15                  What they are, they have to do with an indictment  
16      of Mr. Tomarkin before a grand jury in the State of New  
17      York, to which he pleaded guilty to one count and was  
18      sentenced.

19                  I might add that the conviction in question, the  
20      transactions in question, have nothing to do with any of  
21      these transactions. They have to do with the conduct of  
22      Mr. Tomarkin with another bank of New York, the Franklin  
23      National Bank, and an officer of that bank.

24                  MR. McALLISTER: That reference is accurate,  
25      your Honor, but this again goes to the question of

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2 contributory negligence and the question of whether the  
3 plaintiffs knew who Robert Tomarkin was, and the official  
4 court record shows that it's an alias, Robert Tomarkin is  
5 an alias.

6 THE COURT: I will look at it.

7 MR. McALLISTER: There are two indictments there,  
8 your Honor, one involving a stock swindle similar to  
9 this, and another one.

10 THE COURT: What is the date of this conviction?

11 MR. McALLISTER: I believe it was -- the date  
12 of conviction was September 1974, your Honor.

13 MR. SADOWSKY: It was after the commencement of  
14 this action he was convicted.

15 THE COURT: What is your theory? This is two  
16 years after the transaction.

17 MR. McALLISTER: That is correct.

18 That Robert Tomarkin, the name is an alias.

19 THE COURT: So? Two years later, after these  
20 transactions, it is to be attributed to the plaintiff?

21 MR. McALLISTER: That is correct, your Honor.

22 THE COURT: Objection sustained.

23 MR. McALLISTER: Your Honor, I think it's  
24 relevant that --

25 THE COURT: This is two years after the trans-  
actions at issue.

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2 MR. McALLISTER: I understand that, your Honor.

3 THE COURT: September 1974. These took place  
4 in September 1972. Let's have a sense of balance about  
5 evidence.6 Q At the time these orders were given to you --  
7 and I'm speaking again about the orders in August 1972 --  
8 were any instructions given as to where the delivery was  
9 to be made by either Whitkind or Tomarkin?

10 A No, sir.

11 Q At what point in time were you instructed to  
12 make delivery?13 A When we had the securities ready for delivery,  
14 about a day or two days, three days prior to the actual  
15 shipment by the Hibernia Bank, I was given the instructions  
16 to deliver to the bank in Haiti, for the account of Paul  
17 Supart & Company.

18 Q For the account of the two accounts?

19 A Of the two accounts.

20 Q It was the same type of transaction as the  
21 Massey Lavoie Transaction; is that correct?

22 A Yes.

23 Q And who gave you those instructions?

24 A Mr. Tomarkin.

25 Q And did you ask him who Paul Supart &amp; Co. was?

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2 A Yes, sir.

3 Q And what did he tell you?

4 A He told me this was a friend of his and he had  
5 used him several years previous to that to pick up some  
6 transactions for him, and he had effected it through Paul  
7 Supart.

8 Q The individual?

9 A Paul Supart &amp; Company.

10 Q Did he tell you where Paul Supart & Company was  
11 located?12 A I don't recall specifically, but I seem to  
13 remember him saying something about Miami, Florida. I  
14 don't know if that is where he was located or what, but I  
15 remember the mention of Miami, Florida.16 Q And the transaction was to be Dorsey and Company  
17 to the Hibernia National Bank to the Bank of Haiti to  
18 Paul Supart & Co., which is probably located in the  
19 continental United States?20 A I don't know that it was located in the contin-  
21 ental United States or not.22 Q You didn't really know anything about Paul  
23 Supart & Company?24 A I asked Mr. Tomarkin who Paul Supart & Company  
25 was, and he said that this was a company he had used to

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2 clear transactions through two or three years previous  
3 to this.

4 Q Did you make any inquiry of BNRH, the defendant  
5 here, as to whether they had ever heard of Paul Supart &  
6 Company prior to the delivery?

7 A No, sir, I just deposited the drafts with the  
8 Hibernia Bank and requested that they send them down  
9 there to be either paid or returned by the Bank of Haiti.

10 Q Did you make any inquiry of Paul Supart to see  
11 if they had an account?

12 A No, sir.

13 Q Did you make any inquiry of Paul Supart & Company  
14 to see if they had any free credit for either of these  
15 accounts, the Whitkind or the Tomarkin accounts?

16 A No, sir.

17 Q Were your instructions to the Hibernia National  
18 Bank in writing or were they oral?

19 A Yes, sir.

20 Q They were in writing?

21 A Yes.

22 Q Do you have a copy of those with you, or the  
23 originals?

24 A No, sir, it would be in the form of a deposit  
25 of a collection item.

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2 Q I think you stated on direct examination  
3 that you heard on or about October 1st or September 29th  
4 that the drafts and collection letters and certificates  
5 apparently had not been received by BNRH; is that correct?

6 MR. SADOWSKY: I don't think that that fairly  
7 characterizes what he said.

8 Q Well, after September 25, 1972, what was your  
9 first communication -- you, Mr. Vedros -- from anybody  
10 regarding these certificates?

11 A It was approximately ten days later, I would  
12 imagine, with the Hibernia Bank, to ask if the draft  
13 had been paid.

14 Q Are you familiar with the 35-day rule under  
15 Regulation T?

16 A Yes, sir.

17 Q And the first transaction is on August 15th  
18 and you send these certificates out for delivery on or  
19 about September 25th?

20 A Yes, sir.

21 Q Is that correct?

22 A Yes, sir.

23 Q Is that not more than 35 days?

24 A I believe there's some holidays in there, which  
25 are not counted under Regulation T.

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2 Q They're just business days, calendar days,  
3 business calendar days, the 35-day rule?

4 A I don't understand your question.

5 Q Well, you said there were holidays in there.

6 A Yes, sir.

7 Q Did you ever obtain an extension of credit?

8 A No, sir. These transactions were examined by  
9 the NASD and the SEC, both regulatory bodies, and we  
10 were not found in violation of any Regulation T, or  
11 whatever.

12 MR. McALLISTER: I move to strike the answer.

13 MR. SADOWSKY: I think it's appropriate, your  
14 Honor, in view of the inquiry.

15 THE COURT: What was the question?

16 (Record read)

17 THE COURT: I will let the answer stand.

18 MR. McALLISTER: I'd like to have marked two  
19 documents collectively as Defendant's Exhibit C for  
20 identification.

21 (Defendant's Exhibit C was marked for iden-  
22 tification.)

23 Q Could you identify Defendant's Exhibit C, Mr.  
24 Vedros, please?

25 MR. SADOWSKY: May I see it? Do you have a copy

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2 for me?

3 A Yes, sir, I can.

4 Q What is that, please?

5 A This is a notice of decision of a complaint  
6 against Dorsey and Company by Business District No. 5  
7 of the NASD.

8 Q And are there certain findings of fact and  
9 conclusions in there?

10 A Yes, sir, there are.

11 Q And at your deposition on July 16, 1974, were  
12 you asked these questions and did you give these  
13 responses.

14 "Q Did any Governmental agency investigate  
15 the transactions in suit? By 'Governmental' I mean  
16 SEC or NASD.

17 "A Yes, sir.

18 "Q Did they make any findings of fact?

19 "A No, sir.

20 "Q Did they commence any formal proceedings against  
21 either Dorsey or Dorsey's customer?

22 "A No, sir."

23 Were those your answers to those questions?

24 A Yes, I believe that was with regard to  
25 Regulation T which we were discussing. That is the reference

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2 I had.

3 Q And if I recall the Defendant's Exhibit C and  
4 the decision by the District Business Conduct Committee  
5 No. 5, it deals primarily with the Williams Investors  
6 transaction, does it not?

7                   MR. SADOWSKY: Objection, your Honor. The  
8 document speaks for itself, and it's irrelevant, if  
9 offered.

I object to the question, your Honor, because  
the document speaks for itself.

THE COURT: Objection sustained.

13 MR. MCALLISTER: Your Honor, at this time I'd  
14 like to offer in evidence Defendant's Exhibit C.

15 MR. SADOWSKY: And I object to the offer, your  
16 Honor, on the ground that it's not relevant to any issue  
17 in this transaction.

18 THE COURT: It's a very extensive document.

19 ||| What is its relevancy in terms of --

20 MR. McALLISTER: Your Honor, there was a finding  
21 by the District Committee that there was a violation by  
22 Dorsey and Company of Section 1, Article III, and  
23 Section 2(1)(a) of Article III.

24 THE COURT: What does that provide?

25 MR. McALLISTER: They don't paginate the document.

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2 your Honor, I can find it for you.

3 MR. SADOWSKY: Your Honor, I think it's fair  
4 to say that it has to do with the way these transactions  
5 appeared on the books of Dorsey and Company. It had  
6 nothing to do with the way they handled the account or  
7 transmitted the document. It has only to do with how they  
8 recorded the transaction on their books, and there  
9 is a page here that spells it out in connection with this --

10 THE COURT: I will take it for whatever relevance  
11 it has. I'm not sure it has any.

12 MR. McALLISTER: Well, your Honor, the primary  
13 relevance is the finding of fact that there were  
14 violations, but also it goes to credibility.

15 THE COURT: That is a broad statement. Violations  
16 of what?

17 MR. McALLISTER: Section 1 and Section 2(1)(a)  
18 of Article III, the Rules of Fair Practice.

19 THE COURT: How is that relevant to the issues  
20 in this case? That is what I'm asking you.

21 MR. McALLISTER: The issue of credibility.

22 THE COURT: I will take it on credibility,  
23 particularly in light of the witness' last answer that the  
24 SEC and the NASD investigated and found no violations.

(Defendant's Exhibit G for identification was

1 jkmch Vedros-cross 71  
2 received in evidence.)

3 Q Mr. Vedros, when were you first contacted by  
4 BNRH regarding --

5 MR. McALLISTER: Strike that.

6 Q -- by Hibernia National Bank regarding the  
7 return of the package of the certificates, drafts and  
8 collection letters?

9 A To the best of my knowledge, it was the  
10 morning of the 22nd of December, 1972.

11 Q What steps did you take at that time to effect  
12 collection, or whatever, with regard to the certificates?

13 A I informed Mr. Tomarkin and Mr. Whitkind  
14 that we had recovered the securities and could make  
15 delivery of them.

16 THE COURT: You dropped your voice again.

17 Read the witness' answer, please.

18 (Record read)

19 THE COURT: What happened at that point? That  
20 is December 22nd, right?

21 THE WITNESS: Yes, your Honor.

22 At that time they told me, Mr. Tomarkin said  
23 he would call me back and let me know what I could do with  
24 the securities so far as delivery, and we drafted them up  
25 to a bank in New York, which he was unable to pick up

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1 jkmch Vedros-cross 72

2 because of the serious loss in the stocks, and we never  
3 did effect delivery.

4 Q What was the bank in New York?

5 A I don't recall right offhand, sir.

6 Q Why was he unable to effect the trade? It was  
7 for delivery to himself or to the two entities, was it  
8 not?

9 A Yes, sir.

10 Q Were there insufficient assets in the two  
11 entities to pay for them?

12 A I would have to assume so.

13 THE COURT: You were entitled to payment for  
14 the securities at that time, were you not?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: Why did you sell against the market,  
17 once they told you that they were unable to pick them up?

18 THE WITNESS: Because at that point in time we  
19 had recovered the securities and were attempting to deliver  
20 to the two accounts and get payment in full.

21 THE COURT: But you just said, as I understood  
22 you, that you were not paid.

23 THE WITNESS: Yes, sir.

24 THE COURT: Should you not have sold the stock  
25 then?

2 THE WITNESS: Negotiations with the two parties  
3 involved ensued in hopes of getting full payment, rather  
4 than to have to sell at a loss.

5 Q What was the actual -- can you recall the specific  
6 delivery instructions in December 1972?

7 A No, sir.

8 Q Was it to a bank in New York?

9 A It was a bank in New York, yes, sir.

10 Q To the account of another brokerage house for the  
11 account of the two?

12 A No, sir.

13 Q It was just to a bank in New York?

14 A Yes, sir.

15 Q Was it the Franklin National Bank?

16 A No, sir.

17 I believe it was the Bank of Israel or something  
18 like that.

19 Q Had you ever had any prior dealings with that  
20 Bank?

21 A I can't recall.

22 Q And when did Dorsey and Co. effect redelivery  
23 of the securities after December 22nd, what date?

24 A I'm not certain of the date, but it would have  
25 been shortly thereafter.

4 Q Late December? Early January?

5 A Probably.

6 THE COURT: When you say "effect redelivery,"  
7 do you mean presented the securities for payment?

8 THE WITNESS: Yes, sir.

9 THE COURT: And they were not paid then?

10 THE WITNESS: No, your Honor.

11 THE COURT: Can't we get any dates here on this  
12 matter?13 MR. McALLISTER: Your Honor, this goes back to  
14 my point.15 We effectively ceased discovery as of  
16 December 22nd because of the allegations in the complaint,  
17 the allegations in Mr. Dorsey's affidavit in support of  
18 the request for an order of attachment, and because  
19 Mr. Dorsey, on his testimony at his deposition, stated  
20 that the measure of damages was September 25th to  
21 December 22nd. We did not pursue this area, your Honor.22 MR. SADOWSKY: Your Honor, the witness was  
23 examined at the deposition with respect to what happened  
24 after the securities got back. He was examined with respect  
25 to everything that occurred, once the securities came  
back into his hands, so there is no question of surprise,  
if that is what Mr. McAllister is looking to. He inquired

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2 into that.

3 THE COURT: Apart from the question of surprise,  
4 isn't there a question whether or not the plaintiff was  
5 required, once it knew that the alleged purchasers were  
6 not going to make payment, to sell, and that is the  
7 contention that is being made by Mr. McAllister, and you  
8 framed the complaint that way, too.

9 MR. SADOWSKY: There is no question that we  
10 framed --

11 THE COURT: You are running this date over to  
12 sometime in May 1973.

13 MR. SADOWSKY: There is no question that is the  
14 theory upon which the complaint was prepared. There is  
15 absolutely no question about that.

16 However, what the witness has testified was that  
17 when they came back in December -- on December 22nd, he  
18 still attempted to effect complete payment for it. The  
19 reason why he attempted to complete payment is obvious:  
20 he had no reason to suspect that he would not be paid in  
21 full.

22 THE COURT: Well, he knew, of course, he hadn't  
23 been paid by the drawee down in Haitian.

24 MR. SADOWSKY: That is simply because they said  
25 that the documents --

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2 THE COURT: What you are saying is that the  
3 plaintiff continued to negotiate with people who had not  
4 been making payment of the funds, and they carried this  
5 on until sometime in May, and now you are trying to  
6 increase the damages to May.

7 I think defendant is perfectly right in his  
8 contention here. I think it was a reasonable time after  
9 December 22nd, although the fixed the date December 22nd --

10 MR. PADOWSKY: Your Honor, every indication --

11 THE COURT: We are getting into a different area.  
12 You have got to establish your claim first, and if you do  
13 establish your claim, then there is the question of  
14 damages.

15 Q After December 22nd, did Dorsey and Co. have  
16 any communications with BNRH with regard to this matter?

17 A Not to the best of my knowledge.

18 Q What attempts, if any, did Dorsey and Company  
19 make to locate Paul Supart & Co. after October 1, 1972?

20 A There were, I think, two or three telephone calls  
21 made to Miami, Houston and Dallas, in an attempt to locate  
22 a Paul Supart & Company.

23 Q And what were the results of those telephone  
24 calls?

25 A Negative.

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2 Q In what sense? Who is the recipient of the  
3 telephone calls?

4 A Dorsey and Company.

5 Oh, excuse me.

6 Q Whom did Dorsey and Company call?

7 A We called the information for telephone listings  
8 in those three cities.

9 Q Did you check with the NASD?

10 A Yes, sir.

11 Q Did you check with the SEC?

12 A No, sir.

13 Q What was the result of the NASD check?

14 A There was no Paul Supart & Company.

15 Q When were those checks made; those telephone  
16 calls, first?

17 A After the securities were returned.

18 Q Approximately how long after the securities were  
19 returned?

20 A Shortly thereafter, I would imagine. I don't  
21 recall specifically.

22 Q Late December? Early January?

23 A Yes, sir.

24 Q And the check with the NASD?

25 A The check with the NASD?

1 jkmch

Vedros-cross

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2 A The check with the NASD was a check of the  
3 listings that the NASD puts out of the broker-dealers,  
4 both at home and abroad.

5 I had no certainty that Paul Supart & Company  
6 was a stockbroker in the same sense that Massey Lavoie was.

7 Q I'm sorry. Say that again.

8 A I knew Massey Lavoie was a stockbroker in Canada.  
9 I had nothing to believe that Paul Supart & Company was  
10 a stockbroker anywhere, but I checked the listing of  
11 stockbrokers in the event that they may be a stockbroker.

12 They were not represented to me to be a stock-  
13 broker.

14 Q What were they represented to you to be?

15 A To be a friend and someone that Tomarkin knew who  
16 had cleared transactions for him about two years previous  
17 to the delivery in September of '72.

18 Q This was a man who had access to over \$600,000?

19 A I just stated who he was; to the best of my  
20 knowledge.

21 Q When did you make a check of the NASD listings,  
22 was that?

23 A Around the same time as the telephone calls.

24 Q Did you have any communications with BNRH after  
25 December 22nd?

1 jkmch Vedros-cross 79

2 A Not that I can recall.

3 Q In fact, the transactions in suit were your first  
4 communication or dealings with BNRH, were they not?

5 A No, sir.

6 Q You had prior dealings with BNRH, Dorsey and  
7 Company?

8 A Maybe I didn't understand your question.

9 Q The transactions in suit, were they the first  
10 transactions or communications that you ever had with  
11 BNRH?

12 A Yes, sir.

13 Q Sometime in around January 1, 1973, you attempted  
14 to present the items for payment pursuant to Tomarkin's  
15 and Whitkind's instructions; is that correct?

16 A Yes, sir.

17 Q And it was to a New York bank whose name you  
18 can't quite recall, but it might have been the Bank of  
19 Israel?

20 A Yes, sir.

21 Q What procedure did you follow? Did you redraft  
22 drafts or create new drafts, append the certificates to  
23 them and send them up to the Hibernia National Bank for  
24 collection?

25 A New drafts were created and appended to the

1 jkmch Vedros-cross 80

2 securities, and drafted through the Hibernia National  
3 Bank.

4 Q And when were they sent out by the Hibernia  
5 National Bank?

6 A Late December, early January of 1973.

7 Q When was the next communication you had with  
8 anybody, either Hibernia National Bank or your two  
9 customers, with regard to those drafts?

10 A I can't recall specifically what date it was.

11 Q Was it ten days later? A week later?

12 A Could have been.

13 Q Did you get a communication from the New York  
14 bank at or about that time?

15 A I don't recall.

16 Q Did the New York bank D/K the trade?

17 A Eventually they did.

18 THE COURT: Did the New York bank what?

19 MR. McALLISTER: "D/K," don't know the trade,  
20 your Honor.

21 THE COURT: Don't what?

22 MR. McALLISTER: "Don't know."

23 Q How soon after January 1st did the New York  
24 bank D/K the trade?

25 A I can't recall specifically.

1 jkmch

Vedros-cross

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2 Q Was it two weeks after January 1st?

3 A Could have been.

4 Q Was it two months?

5 A No, sir.

6 Q Was it less than two months?

7 A I would say it would have been within two to four  
8 weeks.9 Q And was that your first communication that the  
10 trade was being dishonored by the two customers of Dorsey?

11 A To the best of my knowledge it is.

12 Q What did you do after that, after you got  
13 that communication from the New York bank?14 A Subsequently conferred with Mr. Dorsey as to the  
15 disposition of the matter.

16 Q What was the gist of that conversation?

17 A Basically he tried to contact Mr. Tomarkin to  
18 try and effect delivery.19 Q What was Mr. Tomarkin's excuse for not honoring  
20 the drafts?21 A The tremendous loss in the securities prevented  
22 him from picking up the draft.23 Q In other words, the transaction, as you under-  
24 stood it, would be that the securities would be delivered  
25 into the other brokerage house in the case of Massey

1 jkmch Vedros-cross 82

2 Lavoie, or in the case of Paul Supart -- we don't know  
3 what it is -- and the securities would be sold and the  
4 proceeds from the sale would pay for your draft; is that  
5 correct?

6 A I have no understanding of that.

7 Q Isn't that what you figured was happening, though,  
8 that they were free-riding?

9 A I didn't figure anything.

10 Q Weren't your accounts, in effect, free-riding  
11 here?

12 A Not to my knowledge.

13 THE COURT: Do you have anything else, Mr.  
14 McAllister?

15 MR. McALLISTER: Just checking my notes, your  
16 Honor.

17 Your Honor, at this time I would merely like to  
18 offer into evidence the deposition of Mr. Vedros.

19 MR. SADOWSKY: I object to it, your Honor,  
20 unless there are specific --

21 THE COURT: You may offer into evidence specific  
22 portions.

23 MR. McALLISTER: Well, certainly Page 20, your  
24 Honor, which was read into the record.

25 THE COURT: And anything else you want to offer

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Vedros-cross

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2 under the rule.

3 MR. McALLISTER: I can't think of anything  
4 right now, your Honor.

5 THE COURT: All right. We will take Page 20.

6 MR. McALLISTER: Defendant's Exhibit D.

7 (Defendant's Exhibit D was received in evidence.)

8 Q Mr. Vedros, do you feel that you really knew  
9 your customers under Rule 4?

10 MR. SADOWSKY: Objection, your Honor.

11 THE COURT: I will let him answer.

12 You may answer.

13 A Yes, sir, I did.

14 Q You don't think --

15 A 100 percent.

16 Q You don't think that you were set up by either  
17 of these individuals?

18 A As it looks like now, it's possible.

19 THE COURT: But you didn't at the time of the  
20 transaction?

21 THE WITNESS: But I didn't at the time.

22 I acted in good faith. We had a history with  
23 both accounts over a period of 4-1/2 months, with good  
24 relationships, drafting of securities out of the country,  
25 large amounts, large sales, and never any problem.

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Trial Testimony.

\* \* \* \* \*

1 jkmch

## 2 AFTERNOON SESSION

3 1:45 p.m.

4 (In open court)

5 MR. SADOWSKY: Your Honor, I do not see Mr.  
6 McAllister in the courtroom at this time.

7 THE COURT: Well, we will wait for him..

8 (Pause)

9 THE COURT: All right, proceed. Call your next  
10 witness.11 MR. SADOWSKY: Your Honor, I think that the record  
12 should reflect at this point that plaintiff attempted to  
13 take a pretrial deposition of Robert Tomarkin and Lloyd  
14 Whitkind, and that each of those witnesses declined to  
15 answer questions on the grounds of self-incrimination,  
16 that their right to invoke the privilege was tested in this  
17 court, and their right to assert it was granted in this  
18 court.19 Do you have any objection to that statement,  
20 MR. McAllister?

21 MR. McALLISTER: No; it's accurate.

22 MR. SADOWSKY: It's accurate, your Honor.

23 Your Honor, at this time I would like to read  
24 portions from the deposition of the defendant. I think  
25 that the record should reflect that the pretrial deposition

1 jkmch "Martineau" 86  
2 incorrectly sets forth the name of the witness. It  
3 appears in the deposition as Marteau, M-a-r-t-e-a-u. His  
4 correct name is Martineau, M-a-r-t-i-n-e-a-u.

5 I am reading now from the deposition of the  
6 defendant, by Gerard Martineau, on January 17, 1975.

7 I am reading in the first instance from Page 2, Line 25:

8 "Mr. Martineau, where do you reside" --

9 I'm sorry. I will read the exact text.

10 "Q Mr. Marteau, where do you reside?

11 "A In Port-au-Prince, Haiti.

12 "Q Are you an officer of Banque National de la  
13 Republic d'Haiti?

14 "A Yes, I am. I am the controller.

15 "Q From here on in, when I refer to "the bank,"  
16 you understand I mean the defendant in this lawsuit; is that  
17 all right?

18 "A All right.

19 "Q And you are the controller.

20 How long have you been the controller, Mr. Marteau?

21 "A Since 1957."

22 I am now going to read from Page 5, Line 19:

23 "Q You are now aware, are you not, Mr. Marteau, that  
24 certain documents were transmitted to your bank sometime in  
25 1972; are you aware of that?

1 jkmch

"Martineau

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2 "A Yes, I am aware of that.

3 "Q Do you have any knowledge whatsoever as to what  
4 happened when the documents transmitted by Hibernia Bank  
5 arrived at your bank? Do you have any knowledge at all  
6 as to what happened to that envelope containing these  
7 documents?

8 "A Well, after investigation of the matter, due to  
9 the claim entered by Hibernia Bank and by Dorsey and  
10 Company, we disclosed that on that date the mail clerk received  
11 the papers and opened the package, and when he saw the  
12 name of the drawer was Paul Supart & Company, which is a  
13 firm or person not existing in Haiti, without any address  
14 given, he thought that these documents were misdirected  
15 to the bank, and were not pertaining to our bank, so he  
16 sent it back to the post office to be returned to the  
17 sender.

18 "Q Could the mail clerk make that decision without  
19 discussing it with an officer of the bank?

20 "A No, he should not have done it, but he was a new  
21 clerk in the department of incoming mail.

22 "Q How would the mail clerk know whether Paul Supart,  
23 the firm, as well as Paul Supart, an individual, had an  
24 account at the bank? How would he have such knowledge?

25 "A Most of the customers and/or firms reside or are

1 jkmch "Martineau

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2 established at Port-au-Prince, and so they're known to  
3 the bank. Everyone in the bank would have knowledge of  
4 that. Although he was a new clerk in that department,  
5 he certainly had experience of which firms were established  
6 in Haiti; you know, the city is not that big that you can't  
7 tell everybody.

8 "Q What was the name of the mail clerk?

9 "A Theodate.

10 "Q Could you spell that, please, for the reporter?

11 "A T-h-e-o-d-a-t-e.

12 "Q Is Mr. Theodate still with the bank?

13 "A Yes, he's still there.

14 "Q In what capacity is he now employed?

15 "A He is the head of the incoming mail department."

16 I am now going to read from the bottom of Page 7,  
17 beginning with Line 24:

18 "Q Then, based upon your investigation, Mr. Theodate  
19 sent the documents back to the post office?

20 "A Yes.

21 "Q Including the envelope in which these --

22 "A The shares were included."

23 I am now reading from Page 14, Line 23 -- no,  
24 I will omit that portion, your Honor.

25 I'm reading now from Page 21, Line 4:

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Trial Testimony.

\* \* \* \* \*

1 jkmch

Martineau-direct

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2 A No, in the first date of December.

3 Q The first days of December?

4 A Yes.

5 Q What action, if any, was taken by BNRH after  
6 that report was made to you?7 A Well, we replied to the Hibernia Bank by cable  
8 stating that the documents -- after investigation, we  
9 found out that the documents had been actually received  
10 but sent back because we thought it was an error.11 Q And were the certificates located at or about  
12 that time?

13 A Which certificates, please?

14 Q The certificates that were sent to BNRH. When  
15 your investigation was made, did your investigation also  
16 include, or the investigatory report, did it also include the  
17 location of the certificates?18 A No. The clerk say that he remembered having  
19 received that remittance.

20 Q I am sorry. What?

21 A The clerk said that he had received at the  
22 mail department the documents with the letter of remittance.23 Q And did the report indicate what the mail clerk  
24 did with those documents?

25 A Yes, he said that he sent it back to the post

1 jkmch Martineau-direct 114

2 office to be sent to the sender, to be sent back to the  
3 sender.

4 Q And did the report indicate when --

5 THE COURT: Sent back to the defendant, did you  
6 say?

7 THE WITNESS: No, to the Hibernia Bank.

8 THE COURT: To the Hibernia Bank?

9 THE WITNESS: Yes.

10 THE COURT: I thought you said to the defendant.

11 THE WITNESS: No, to the sender.

12 THE COURT: "Sender"; I'm sorry.

13 Q Did the report indicate when the mail clerk  
14 in BNRH returned the package to the post office?

15 A Yes. He stated that it was the date following  
16 the date of receipt of the documents.

17 Q And do you know what that date was?

18 A It should be September 30th, because I think  
19 they were received on September 29th.

20 Q And did your report indicate when the documents  
21 were sent by the post office to the Hibernia National Bank?

22 A Yes, because we had requested a certificate  
23 from the post office, and they told us that they'll give  
24 us a certificate stating that it had been sent, I think,  
25 on December 2nd.

1 jkmch Martineau-direct 115

2 Q 1972?

3 A 1972.

4 Q Did the report indicate what method was used  
5 for sending the documents back?

6 A No. Just a statement that it was sent back at  
7 that date.

8 Q Was any investigation made by your Bank  
9 regarding Paul Supart & Co.?

10 A Yes. We did. We made an investigation to confirm  
11 the assumption of the clerk which was not investigated  
12 fully, but we found out that it was actually, really  
13 not known to anybody in Haiti.

14 Q Mr. Martineau, would you look at Plaintiff's  
15 Exhibit 11, and is that a copy of a cable sent by your  
16 Bank to Hibernia National Bank?

17 A Yes, it's a copy of that cable.

18 Q Did you ever receive a response to that cable?

19 A No, we didn't receive any answer.

20 Q Other than a lawsuit?

21 A No.

22 THE COURT: Is that an exhibit in evidence?

23 MR. McALLISTER: Yes, it's in evidence.

24 Plaintiff's Exhibit 11, your Honor.

25 THE COURT: Oh, 11. That is the cable of

1 jkmch

Martineau-direct/cross

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2 December 19th?

3 MR. McALLISTER: Yes, sir, the cable of

4 December 19th.

5 Q I'm going to show you two exhibits, Plaintiff's  
6 Exhibit 4 and Plaintiff's Exhibit 5, which are cables  
7 dated October 17, 1972 and October 20, 1972, and in your  
8 investigation in this matter, was there any record of the  
9 Bank that indicates that these documents were received, or  
10 the originals thereof were received by your Bank?

11 A Yes, they both have been received by the Bank.

12 Q Mr. Martineau, has your Bank ever received  
13 documents similar to Plaintiff's Exhibit 1 with stock  
14 certificates attached for collection before, to your  
15 knowledge, before September 25, 1972?

16 A No, not to my knowledge.

17 MR. McALLISTER: I have no further questions, your  
18 Honor.

19 CROSS-EXAMINATION

20 BY MR. SADOWSKY:

21 Q Mr. Martineau, you have received letters of  
22 collection, have you not?

23 A Yes, we have.

24 Q Do you receive them daily?

25 A Daily, yes.

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Trial Testimo. .

\* \* \* \* \*

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martineau-cross

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lady?

testifying in my office, Mr.

d me that Mr. Theodate should

id not? Do you remember that?

re changing that testimony?

not make inquiry?

iefs; no; to the people to whom

y.

clerk?

I would like at this time,

ified by the witness, to introduce

entification.

R: No objection.

Exhibits Nos. 4 and 5 for iden-

in evidence.)

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Paul Supart &amp; Co. in connection with

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Paul Supart &amp; Company at

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Q You notified t

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Company?

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A No. We notifi

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remittance, but that we

18

Q I'm sorry, Mr.

19

stood my question.

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Did you notify

21

knew nothing of Paul Supa

22

A No, it was not

23

Q In what cable?

24

A In the cable th

25

Q So, you did not

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Martineau-cross

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be the letter of November 16th

s Exhibit 8?

our testimony is that that letter

etime early in December; is that

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otify -- your Bank -- did your Bank

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that time?

ter the investigation. That has

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hem that there was no Paul Supart &

ed them that we hadn't received

had sent it back.

Martineau, I don't think you under-

the Hibernia Bank that your Bank

art & Company?

stated in the cable.

hat we sent to the Hibernia Bank.

tell them; is that correct?

1 jkmch

Martineau-cross

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2 A No; that is right.

3 Q You did not tell them?

4 A No.

5 Q And you finally did send a cable to the Hibernia  
6 Bank, and that is Exhibit 11; is that correct?

7 A Yes. That is it.

8 Q And, of course, you did not mention Paul Supart  
9 in that cable, did you?

10 A No, we didn't.

11 Q And, as a matter of fact, Mr. Martineau, you  
12 offered to collect these items in this cable, did you not?

13 A We what, please?

14 Q You offered to collect these items in this  
15 cable?16 A Yes, to take care of the collection; that is  
17 right.

18 Q Against Paul Supart &amp; Company?

19 A Yes, to investigate and state that we didn't  
20 know them.

21 MR. SADOWSKY: I have no further questions.

22 MR. McALLISTER: No redirect, your Honor.

23 THE COURT: All right.

24 You are excused, Mr. Witness.

25 (Witness excused)

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Trial Testimony.

\* \* \* \* \*

1 jkmch           Pierre-Louis-direct           124  
2 particularly, and he's subject to cross-examination the same  
3 way as any other witness.

4                   MR. PIERRE-LOUIS: I'm ready to swear.

5 VICTOR           PIERRE - LOUIS,  
6 called as a witness by the defendant, being first  
7 duly sworn through the interpreter, testified as  
8 follows:

9                   THE COURT: Is that your first name, Pierre?

10                  THE WITNESS: No.

11                  THE COURT: What language do you speak?

12                  THE WITNESS: I speak French.

13                  THE COURT: Do you understand the interpreter?

14                  THE WITNESS: Certainly. That is my language.

15                  THE COURT: And you understand him?

16                  THE INTERPRETER: Yes, I understand.

17                  THE COURT: You have no difficulty in conversing  
18 with one another?

19                  THE WITNESS: None.

20 DIRECT EXAMINATION

21 BY MR. McALLISTER:

22 Q       Mr. Pierre-Louis, are you duly licensed to practice  
23 law in the Republic of Haiti?

24 A       Surely.

25 Q       What schools or universities did you attend?

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2 A The Faculty of Law of Port-au-Prince, Haiti.

3 Q Is that a university?

4 A Yes, it is.

5 Q When did you graduate?

6 A End of July 1952.

7 Q When were you licensed to practice law?

8 THE COURT: Are you going to remember all that  
9 now?

10 THE INTERPRETER: Yes.

11 A Four days after my graduation I swear, and I have  
12 to spend two years of study before I could have my license  
13 that I have in 1954, and then I can be at all the courts  
14 in Haiti, the high courts, even the accounts court, accounts  
15 court in Haiti.

16 Q Mr. Pierre-Louis, have you practiced law in  
17 the Republic of Haiti?

18 A Yes, I did.

19 Q And how long have you practiced law in Haiti?

20 A Since 1954, I do only that.

21 Q Do you specialize in any particular branch of  
22 law?

23 A In Haiti there is no specialization, but the  
24 matter that interest me more is the civil law, the  
25 matter of housing and rent, and some international law

1 jkmch                   Pierre-Louis - direct           126  
2 and constitutional law relative to the international  
3 law.

4 Q       Mr. Pierre-Louis, have you written any legal  
5 texts or articles?

6 A       I didn't write any books, but beside of being  
7 a lawyer, I am a journalist and I used to give my opinion  
8 on law, many laws.

9 Q       In newspaper articles?

10 A       Yes.

11 Q       Mr. Pierre-Louis, have you been associated with  
12 any law schools or universities in your legal capacity?

13 A       I do teach usually law in the University, Institute of  
14 Information, technical and commercial aspect.

15 Q       Mr. Pierre-Louis, I'm going to pose a hypothetical  
16 question to you.

17           MR. SADOWSKY: Your Honor, before the question  
18 is posed, may I have some questions on the voir dire?

19           THE COURT: Yes.

20 VOIR DIRE EXAMINATION

21 BY MR. SADOWSKY:

22 Q       Mr. Pierre-Louis, have you ever represented any  
23 banks?

24 A       Actually, I am now a counsel of the National  
25 Bank of Haiti.

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Trial Testimony.

\* \* \* \* \*

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2 Haiti a package consisting of collection letters, drafts

3 of a Louisiana corporation, and stock certificates which

4 the bank in Haiti receives on September 29, 1972, and

5 the collection letters contain the following language:

6 "If unpaid, please wire stating reason before returning

7 draft and, in the event of delay of payment or acceptance,

8 or dishonor, notify us promptly giving reasons," and

9 also contains language: "Nonacceptance and nonpayment

10 to be advised by cable" --

11 THE INTERPRETER: It's very long, but I tell  
12 him the question is not asked yet, you just stopped the  
13 question.

14 I would like that you let me write the question,  
15 because it's a very long one.

16 MR. McALLISTER: Would that be all right, your  
17 Honor?

18 THE COURT: Well, I think it would be helpful.  
19 If the witness feels that he needs the question in writing  
20 I will allow it.

21 MR. McGALLISTER: Shall I start again?

THE INTERPRETER: Yes.

Q If, on September 25, 1972, a bank in Louisiana,  
United States, sends to a bank in Haiti a package  
consisting of collection letters, drafts of a Louisiana

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corporation, and stock certificates, which the bank in  
Haiti receives on September 29, 1972, and the collection  
letters contain the following language: "If unpaid, please  
wire, stating reason, before returning draft" and "In  
the event of delay of payment of payment or acceptance,  
or dishonor, notify us promptly giving reasons," and  
"Nonacceptance and nonpayment to be advised by cable,"  
and "Deliver documents against payment and remit proceeds  
by cable," and the drafts stated that they were payable  
on sight, and the documents identified the drawee as for  
the account of a nonexistent company as agent for another  
entity located in New York, and the Bank in Haiti opens  
the envelope and returns it the next day to the post office of  
Haiti for transmittal to the sender, and the post office in Haiti  
holds the envelope for two months, and then sends the  
package to the bank in Louisiana, which receives it on  
December 22, 1972; what is your opinion, if any, of the  
liability of the Bank in Haiti to the Louisiana corporation  
which was the drawer of the drafts, under the laws of  
Haiti?

22 MR. SADOWSKY: I object to the question, your  
23 Honor. Your Honor, the hypothetical question attempts  
24 to encompass the whole complexities of this case, every  
25 fact. In some cases they're in error.

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Trial Testimony.

\* \* \* \* \*

1 jkmch

Pierre-Louis - cross

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2 THE INTERPRETER: He said it's hard to answer  
3 by a part of a phrase, but when he said there is  
4 compensation, he wants to explain.

5 THE COURT: All right. Explain.

6 THE WITNESS: When a party is at fault, that  
7 party has to be condemned.

8 When both are faulty, and they send back the two  
9 parties, you know, because what one had to give, the  
10 other one had to give the same thing, and they just dismiss  
11 the case.

12 THE COURT: Does that conclude your direct  
13 examination, counsel?

14 MR. McALLISTER: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. SADOWSKY:

17 Q Mr. Pierre-Louis, is the law of Haiti codified?

18 A What do you say by "codified"?

19 Q Is it written?

20 THE INTERPRETER: He said there is all the law,  
21 the written law, and beside that there is the jurisprudence.

22 And he said what the jurisprudence is in the way  
23 the High Courts judge the question.

24 Q Is there a civil code?

25 THE INTERPRETER: He said, "Here, I have it now."

1 jkmch

"Dorsey

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2 MR. McALLISTER: No other witnesses, but I  
3 would like to read a portion of a transcript of a  
4 deposition.

5 (Witness excused)

6 THE COURT: Go ahead.

7 MR. McALLISTER: Your Honor, I'm about to read  
8 from the deposition of George Dorsey taken on July 16,  
9 1974. The deposition was sworn to by Mr. Dorsey on  
10 August 23, 1974.

11 Page 4, Line 7:

12 "Q Mr. Dorsey, please state your full name.

13 "A George Dorsey.

14 "Q Where do you live?

15 "A I live in New Orleans, 1012 Hibernia.

16 "Q Are you presently employed?

17 "A I am president of Dorsey and Company.

18 "Q Inc.?

19 "A Inc."

20 Skipping down to Line 21.

21 "Q Are you the chief executive officer?

22 "A I am.

23 "Q What is the business of Dorsey and Co., Inc.?

24 "A We're primarily in the brokerage and investment  
25 banking business."

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"Dorsey

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2 Turning to Page 16, Line 16:

3 "Q Have you had any conversations with anybody at  
4 Paul Supart & Co.?

5 "A No.

6 "Q Did you make any attempts to check the bona fides  
7 of Paul Supart & Co.?

8 "A No.

9 "Q Did you ever attempt to check the bona fides  
10 of Williams Investors?

11 "A No.

12 "Q Did you ever attempt to check the bona fides  
13 of Whitkind Realty?

14 "A No.

15 "Q Did you ever attempt to check the bona fides  
16 of the principals of either Whitkind Realty or Williams  
17 Investors?

18 "A No.

19 "Q At any time?

20 "A No.

21 "Q Did anybody in Dorsey attempt to ever check the  
22 bona fides of either Williams Investors and Whitkind  
23 Realty?

24 "A To the best of my knowledge, no.

25 "Q Do you know if anybody at Dorsey and Co., Inc.,

1 jkmch "Dorsey 146

2 attempted to check the bona fides of Paul Supart & Co.?

3 "A No.

4 "Q Do you know what the investment objective of  
5 either Whitkind Realty or Williams Investors was?

6 "A No.

7 "Q Do your new account forms show what the  
8 investment objective of those two entities were?

9 "A No."

10 And, your Honor, that concludes the reading of  
11 the deposition, and I would like to have those pages  
12 marked into evidence as Defendant's Exhibit --

13 THE COURT: What pages are they?

14 MR. McALLISTER: Pages 4, 16 and 17, your Honor.

15 (Defendant's Exhibit E was received in evidence.)

16 MR. McALLISTER: Your Honor, at this time I'd  
17 like to renew my request to have Defendant's Exhibit B,  
18 consisting of the court files for Roberto Tomarkia,  
19 alias Robert Tomarkin, offered into evidence and  
20 accepted into evidence, the reason being, your Honor,  
21 at the time this was initially offered, the Court  
22 indicates that because the date of conviction was  
23 September 27, 1974, the Court felt that the time element  
24 was too removed from the dates of the transactions in  
25 suit, and I would just like to point out to the Court that

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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DORSEY & CO., INC.,

Plaintiff-Appellant,  
against

BANQUE NATIONAL DE LA REPUBLIC D'HAITI,

Defendant-Appellee

AFFIDAVIT  
OF SERVICE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT--  
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,  
COUNTY OF NEW YORK, ss.:

Nathan Chambers, being duly sworn, deposes and says that he is over the age of 18 years, is not a party to the action, and resides at 510 Atlantic Avenue, Brooklyn, New York  
That on September 26, 1975, he served 1 copies of Appendix and two copies of Appellant's Brief;  
on

LUNNEY & CROCCO,  
Attorneys for Defendant-Appellee,  
20 Exchange Place  
New York, New York 10005

by delivering to and leaving same with a proper person or persons in charge of the office or offices at the above address or addresses during the usual business hours of said day.

... Nathan Chambers ...

Sworn to before me this  
26th day of September , 1975

*John V. DiSposito*  
JOHN V. DESPOSITO  
Notary Public, State of New York  
No. 30-0932350  
Qualified in Nassau County  
Commission Expires March 26, 1977